



## **Carolina's Creative Counseling Grievance Policy Addendum: *Using Grievances as an Advocacy Tool***

Has your provider decided to cut your services? Is your child's school denying special education services? Are you dissatisfied with treatment by a hospital?

You are entitled to file a **grievance**. This handout explains the general process for filing a grievance. Filing a grievance is an important self-advocacy tool.

This handout will give you general guidance about following a grievance procedure. Every provider and agency has its own particular grievance procedure, and it is important that you follow the particular grievance procedure that applies to your situation.

This handout also includes tips on writing a grievance and making a good argument.

Other resources, including the grievance policies and necessary forms of several federal and state service delivery systems, are posted on the DRNC website. That information can be accessed by going to [www.disabilityrightsncc.org](http://www.disabilityrightsncc.org).

### **What is a Grievance?**

A **grievance** is a means to resolve a disagreement between a consumer of a service and the agency that provides it. A **grievance procedure** is a process that helps guarantee the needs of the consumer are met and serious concerns are addressed or taken care of. The grievance procedure establishes a timeline for making the complaint, receiving a response, and disagreeing with the response in a more formal or structured way.

A grievance is a statement expressing concerns about a circumstance thought to be unjust or a disagreement with how services are provided. All service delivery systems must have some type of process for resolving disagreements. For example, your mental health services provider has a grievance procedure. Your local hospital also has a grievance procedure. Your child's school district has a grievance procedure.

If a service is funded with federal dollars, the agency providing the service is required to have a very specific process for resolving disagreements between the provider and the consumer. For example, the process for resolving disagreements related to special education is dictated by federal law and is called "Due Process." The process for resolving disagreements related to CAP-MR/DD Medicaid services is dictated by state and federal law and involves an administrative hearing.

**Every provider or agency has a grievance procedure. Always ask for the grievance procedure when you apply for services. It is important to know what the grievance procedure is before you need it.**

### **What Can Be Grieved?**

There are four general grounds for filing a grievance: (1) All or part of service or treatment is denied; (2) Service or treatment that was already approved is reduced, changed or terminated; (3) Provider or agency fails to act within approved timeframes; or (4) Provider or agency fails to provide treatment in a timely manner.

Decisions related to the delivery of services must be reviewed within the context of the following: (1) Law or regulation; (2) Agency policies and procedures; (3) An agreement or contract for services (such as an IEP or PCP) between the provider and consumer; or (4) Well-established standards of practice.

Typically the *quality* of a specific service cannot be grieved unless the issue relates to the qualifications of the direct provider of the service.

A grievance procedure may also be called an appeal or complaint. Regardless of the name, the process usually moves from informal to formal.

### **Who Can File a Grievance?**

There may be some restrictions about who can file a grievance. Usually the person filing the complaint must have legal status



to do so. This means the grievant must be the person receiving the service, the parent of a minor receiving service, or the legal guardian of a recipient of service.

### **Who Will Hear the Grievance?**

The provider's grievance procedure usually identifies who will hear the grievance and what authority they have to overturn a previous action. At the lower levels of the chain of command, the person hearing the grievance may be limited in her/his power to make a change. Often, s/he may be limited to making a recommendation only.

The person hearing the grievance may be internal to the agency (usually a supervisor or program manager) or may be external to the agency (such as an impartial hearing officer or a mediator).

**What Must Happen Before A Grievance Can Be Made?** A process might require an attempt to resolve the disagreement informally or through mediation. Some procedures encourage an attempt to first discuss any disagreement with the person providing the service. Be sure to clarify whether these types of informal steps are mandatory or optional.

### **What is "Due Process"?**

The Constitution of the United States creates the right to 'due process.' Due process is best defined as 'fairness' – fairness in treatment of citizens by federal, state, and local governments. When a person is treated unfairly by the government s/he is said to have been deprived of or denied due process.

Due Process can have many components: adequate notice, an opportunity to be heard at a meaningful time in a meaningful way, a decision supported by substantial evidence, etc. In general, the more important the individual right in question, the more due process must be afforded.

The need to comply with due process requirements is why programs that offer a service paid for with either state or federal dollars (directly or indirectly) must have a process for consumers of that service to challenge a decision by a provider to deny, reduce, or terminate services. This process – whether called a grievance, appeal, complaint or due process -- ensures the decision was fair according to the rules and regulations governing those services.

### **What is the Timeline for Filing a Grievance?**

There are strict timelines that have to be followed – both for the person filing the grievance and for the agency receiving it. You might have to make the grievance within a certain number of days (usually 15, 30, or 60) after learning of the decision you are unhappy with. **If you don't file your grievance within the timelines specified by the grievance procedure, you will likely lose the right to go through the grievance process.**

The procedure also should identify how quickly the provider must respond to your complaint once it is received. This means the person hearing the complaint must make a decision and share it within a certain number of days.

### **Who Has the Burden of Proof?**

The term "burden of proof" means who must show through evidence or "proof" that they are right. The procedure should explain who must prove the decision is right or wrong. Usually, it will be your responsibility as the person complaining or grieving about a decision to show why you disagree.

### **How Do I Prove My Argument?**

Your proof might be copies of agreements, letters, telephone logs, pictures, or a witness (someone who observed something or is an expert.) Read the grievance procedure carefully for any explanation that might limit the type or amount of information you can present. This might be a page limit, the amount of time you will have to make your case, or who can testify at the hearing. Also look for direction about when the information must be submitted.

### **Why Filing a Grievance is Important**

Filing a grievance is a type of advocacy. Advocacy is important because you are important. You always have your rights and must exercise them. The grievance process is a good way to document your complaints, receive a response, and find out what the next step would be to further advocate your argument.

### **You have the right to disagree with a decision and ask that it be changed.**

No matter what the issue is or the provider's reason for it not being what you want, you always have the right to ask why that

decision was made and what can be done to change it. Challenging bad decisions is important. It is a way to access what you are entitled to within the community, uphold your rights, and have your needs met.

Here are some more reasons why using your right to grieve is so important:

- It can assist you and others to gain access to resources, funding and information.
- Advocacy will help you have control over your situation.
- It ensures that you have a voice and that it will be heard.
- Advocacy will help make service providers and organizations accountable ensuring there is transparency in their actions and decisions.
- Advocacy can change community attitudes and misconceptions.
- Advocacy makes sure that there is recognition of the rights of people with a disability.
- It also promotes positive change to the structure and policy of organizations, which will be of benefit to all people with a disability.

### **How Do I Find the Grievance Procedure?**

- You can call the agency/provider and ask the person who answers the phone (or their customer service department) that can give you information on their grievance procedure.
- If you have a handbook, such as those often given to students, parents, patients, and consumers, the grievance procedure can usually be found in the handbook. It may have a different name, but should describe a process you can use if disagree or “dispute” something.
- A general employee of the agency/provider should be able to direct you to the appropriate procedure or at least someone who could provide it to you.

### **How to Grieve: Step-by-Step**

#### **Step 1 Know Your Grievance/Appeal Rights**

Request clear written information on the provider or agency’s grievance procedure. Agencies are accountable for the decisions they make. You are entitled to know and exercise all your options to obtain the assistance you need.

Know ahead of time what the next step will be if you are not satisfied with the provider agency’s final decision. This may include the right to grieve to an outside agency.

#### **Step 2 Discuss Your Concerns**

This is usually considered a more informal step before filing a formal grievance.

Talk directly with your service provider either by phone, in person (you may bring someone along for support), or by writing a letter. Schedule a meeting with your service provider. Speaking to someone in person can be an effective way to be a self-advocate.

Plan what you are going to say and then practice on friends, with a tape recorder, or in front of the mirror.

- Dress accordingly and be on time.
- Be courteous and call the person by name.
- Stay calm.
- State your message clearly and simply.
- Prepare an agenda or a list of things you want to say; it helps keep you focused on your issues.
- Be attentive and if you do not understand something, ask questions.

If you feel you are not getting anywhere, tell her/him that you wish to pursue your issue further and ask to speak to the person’s supervisor. Thank the person for her/his time.

It is important to document who you speak to. Write down their name and title and a summary of what was discussed.

While this step can be effective, be sure to keep in mind the timeline for filing a formal grievance, in case the informal discussion doesn’t resolve your complaint. Be sure you don’t miss the deadline for filing a formal grievance.

#### **Step 3 Put It in Writing**

This is usually considered the first step in a more formal process. A written grievance is a letter that presents facts, requests and confirms information, and/or expresses your opinion.

Keep it short and simple -- under two pages if possible. When you put your grievance in writing, just state the essential facts about this particular problem. It might feel good to write pages of history and how you feel about the people you are unhappy with, but these items should not be part of your grievance. Stick to the facts. Sticking to the facts may include the specific actions and decisions of the person or agency. You may want to point out any law or regulation you think has not been followed when the agency or person was making the decision with which you disagree. Looking at the agency's policies may also be useful. Include information in your grievance about why you believe they did not follow these policies. It usually strengthens your argument if you can cite specific policies or sections.

### **Tips for Writing a Grievance Letter**

Good organization is essential to writing an effective complaint, which is the first step in a formal grievance procedure. It is the first opportunity to make your case. The letter will sum up why you think the provider's decision about your services was the wrong one.

Start with identifying the facts and then find the rule you feel the provider has failed to follow.

Before you start the letter make a list of the facts.

- Try to link each fact with a law, regulation, or rule.
- Try to have an example – a letter, or entry from a log of events like a phone call – that supports your position.

Now that you have an outline – you can start writing the letter. The first paragraph should identify what you are grieving.

*"I am filing a grievance regarding your letter dated March 1, 2007 notifying us of the reduction of services for our daughter, Rosa."*

The next paragraph should present the relevant facts and applicable laws/regulations/rules. Use the facts from your list. Put them in chronological order.

*Rosa's treatment team met on January 1, 2008. At that meeting, the Team made a recommendation that services continue to be provided at the same level. (See exhibit A - copy of the CNR)*

*On March 1, 2008, we received a letter stating that Rosa's services were being reduced effective February 15, 2008. The letter was dated February 20, 2008. (See exhibit B – copy of the February 20 letter).*

*According to [law/regulation/rule], a consumer is entitled to \_\_\_ -days notice of a change in services. We did not receive that amount of notice.*

The final paragraph of your letter should summarize why you are grieving and how you want the grievance to be resolved.

*We are grieving this decision for two reasons: improper notice and change in treatment without due process. We request Rosa's services continue to be provided at the same level.*

### **Some Other Tips:**

- Keep your message positive.
- Send copies of your letter to agency supervisors, advocacy groups, or others you want to inform. Put "cc" (copies circulated) at the bottom of the letter with a list of those to whom you are sending copies.
- In some instances you may want to copy your legislator.
- Be sure to put the date of your letter/grievance on the document.
- Keep a copy for your records.
- This documentation will be useful if you need to follow up.
- A grievance in writing creates a record that usually triggers more safeguards, including timelines for response.

### **Step 4 Make Your Argument**

This step involves a hearing – either in person or on the telephone – where you can further explain why you believe a decision was incorrect.

- State the issue clearly
- Cite the law, regulation, rule, or written policy that supports your position



- Introduce your documentation and/or other evidence
- Identify witnesses, including experts about best practice if you can
- Say what you want

Before the hearing, it is helpful to practice what you will say. Ask friends to let you practice on them or use a mirror.

### **Step 5 Follow Up**

Ask when you should expect to learn of the decision. Request that the decision be sent to you in writing. If you do not receive a written decision in a timely manner, call and remind the provider you have not received the decision. Document that you did not receive the decision in the time frame specified.

### **At Every Step . . . ASK FOR HELP**

Link up with advocacy organizations; such as the Protection and Advocacy System, for more specific information on the problems you are having with your provider and/or for help (formal or informal) with your appeal. Remember there are also community support groups or organizations that can help you advocate for yourself throughout the grievance process.

*This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney. Created in 2009 by Disability Rights NC.*

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