

CF OPERATING PROCEDURE
NO. 60-10, Chapter 6

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, January 27, 2012

Personnel

FILING COMPLAINTS BY REASON OF DISABILITY

6-1. Purpose. This chapter establishes uniform procedures for customers and potential customers or companions to file complaints of discrimination against the Department by reason of a disability.

a. Customers include those individuals applying for or receiving benefits provided by the Department, its contracted client services providers, subcontractors, and Community Based Care providers.

b. Companions include an individual who is deaf or hard of hearing and is one of the following:

(1) A person whom the Customer indicates should communicate with the Department about the Customer, such as a person who participates in any treatment decision, a person who plays a role in communicating the Customer's needs, condition, history, or symptoms to the Department or a person who helps the Customer act on the information, advice, or instructions provided by the Department;

(2) A person legally authorized to make healthcare or legal decisions on behalf of the Customer;;or,

(3) Such other person with whom the Department would ordinarily and regularly communicate about the Customer.

6-2. Retaliation. No person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 504 of the Rehabilitation Act of 1973, Americans With Disabilities Act (ADA) of 1990, or other federal and state civil rights laws, or because he/she participated in any manner in an investigation, proceeding or hearing under said laws.

6-3. Accommodation. All Charging Parties, witnesses, and other participants must be advised of their right to request reasonable accommodations for any phase of the complaint process. All correspondence issued to participants shall contain contact information for requesting accommodations.

6-4. Complaint Process.

a. Customers, potential customers, and companions who believe they have been the victim of discrimination by reason of a disability in the provision of benefits or services may file a written complaint of discrimination within 180 days of the alleged discriminatory act(s) with:

- (1) Assistant Staff Director
Department of Children and Families (DCF)
Human Resources – Office of Civil Rights
1317 Winewood Boulevard
Building 1, Room 110
Tallahassee, Florida 32399-0700
(850) 487-1901; or TDD (850) 922-9220; or Fax (850) 921-8470
- (2) United States Department of Health and Human Services (HHS)
Attention: Office for Civil Rights
Atlanta Federal Center, Suite 3B70
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909
(404) 562-7888; TDD/TTY (404) 331-2867; or Fax (404) 562-7881
- (3) United States Department of Agriculture (USDA)
Attention: Office of Civil Rights
Atlanta Federal Center, Suite 8T36
61 Forsyth Street, SW
Atlanta, Georgia 30303-3427
(404) 562-0532; TDD/TTY (202) 720-5964; or Fax (404) 527-4517
- (4) United States Department of Justice (USDOJ)
Office for Civil Rights – Office of Justice Programs
810 7th Street, NW
Washington, DC 20531
(202) 307-0690; or TDD/TTY (202) 307-2027; or Fax (202) 616-9865
- (5) United States Department of Justice (USDOJ)
Civil Rights Division– Disability Rights Section
1425 New York Avenue
Washington, DC 20530
(800) 514-0301; or TDD/TTY (800) 514-0383

b. The complaint must be signed by the Charging Party and contain:

- (1) Basis for the complaint.
- (2) Name, address and phone number of the person (Charging Party) filing the complaint.
- (3) Name and address of the person or provider against whom the complaint is filed.
- (4) Description of the alleged discriminatory act(s) and the dates the alleged discriminatory act(s) occurred.

c. Complaints filed with either of the above-listed federal agencies are subject to the federal laws governing such complaints. Final determination of the merits of the complaint will be made by the federal agency having jurisdiction of the complaint.

6-5. Notification of Complaint.

a. Internal Complaints. Upon receipt of a written complaint filed directly with the Department, the Department of Children and Families (DCF) Office of Civil Rights will send a written acknowledgement of receipt of the complaint to the Charging Party. Notice shall also be provided to the appropriate Deputy Secretary, Assistant Secretary, Regional Managing Director or Hospital Administrator.

b. External Complaints. Upon receipt of notification of a complaint filed directly with an external agency, the DCF Office of Civil Rights shall notify the appropriate Regional Managing Director or Hospital Administrator of such complaint. The DCF Office of Civil Rights will also notify the Charging Party that all inquiries regarding the status of the complaint will be provided by the external agency, not the DCF Office of Civil Rights.

6-6. Assignment of Complaints for Investigation.

a. Within two (2) business days after receipt of a complaint, the DCF Office of Civil Rights will assign a case number, scan the documents received, enter the complaint into the DCF Office of Civil Rights Tracking System, make a case assignment for the investigation and enter the assignment into the DCF Office of Civil Rights Tracking System, and advise the designated Civil Rights Officer of the assignment.

b. In the case of a conflict of interest, another Department representative may be designated as the investigator by the Headquarters Human Resources Director or Assistant Staff Director for Civil Rights.

6-7. Scope of the Investigation.

a. The Civil Rights Officer/investigator will identify the issues raised in the complaint and ensure all allegations are thoroughly investigated separately addressing each issue and allegation set forth in the complaint.

b. Each allegation or issue must be either affirmed (supported) or denied (rebutted) and the reasons for such determination provided. Minimally, each investigative report must reflect:

(1) The manner in which the Charging Party was treated, affected and why.

(2) The manner in which others who were similarly situated were treated, affected and why.

(3) The alleged discriminatory official's reasons for such actions or treatment and related policies and practices.

(4) If such actions, treatment, policies and/or practices were lawful and non-discriminatory.

(5) The recommended position for the Department (Respondent) relative to the merits of the complaint, i.e., "reasonable cause" or "no reasonable cause," to believe that unlawful discrimination occurred.

6-8. Supporting Documentation and Evidence.

a. Notarized or sworn (or affirmed) statements will be utilized during the investigative process. A notarized statement is a statement prepared by the witness that gives an accounting of what the witness knows or does not know regarding the Charging Party's allegations. Formats for such statements are prescribed in s. 117.05, F.S. Under no circumstances is a Civil Rights Officer allowed to notarize a statement that has not been signed in the Civil Rights Officer's presence.

b. Interview of individuals will be conducted in an impartial or objective manner.

c. No direct contact with a Charging Party will be made if the complaint is filed with an external agency and the Charging Party indicates they are represented by an attorney. Requests for information or documentation from such Charging Party are to be made to the Charging Party's attorney.

d. Interview notes may be made during the interview. Interview notes shall be clearly marked with the date and time of the interview and the name of the interviewer and interviewee. All interview notes should be signed or initialed by the interviewee. If someone other than the Civil Rights Officer conducts an interview, the Civil Rights Officer shall attempt to obtain copies of or review and attest to the existence of documents supporting the interview statements being relied upon.

e. Other evidence or information that is substantiated by personal observations of a witness may be used as supporting evidence.

f. Documents such as personnel records, reports, rules, regulations, manuals, policies, operating procedures, notarized statements and expert witness testimony constitute acceptable evidence.

6-9. Preliminary Review of Findings.

a. The Civil Rights Officer shall review all issues identified in the complaint to ensure sufficient information has been received to address each allegation. The information and documents acquired during the investigation shall be assessed to determine their significance and sufficiency as evidence contributing to a Departmental finding of "no reasonable cause" or "reasonable cause" to believe that an unlawful act of discrimination occurred as alleged.

b. Inconclusive, uncorroborated evidence or hearsay testimony is an insufficient reason for "reasonable cause" determinations. In those situations, the findings will be "no reasonable cause".

6-10. Submission of Report and Administrative Review.

a. External Complaints. All complaints forwarded to DCF by an external agency for investigation will be completed within 90 days of receipt of the complaint by DCF Office of Civil Rights. Investigators will complete an investigative report within 45 days of assignment and forward the report to the DCF Office of Civil Rights for review via the Civil Rights Tracking System, after legal review. The DCF Office of Civil Rights will complete its review within 45 days of receipt.

b. Internal Complaints. All internal complaint investigations will be completed within 180 days of receipt of the complaint by the Department. Investigators will complete an investigative report within 90 days after assignment of the complaint and forward the report to the DCF Office of Civil Rights for final review via the Civil Rights Tracking System, after legal review. The DCF Office of Civil Rights will complete its final review within 90 days of receipt.

c. Legal Review. Legal review shall be completed within three days of receipt for external complaints and within five days of receipt for internal complaints.

d. Administrative Review.

(1) Upon receipt of the investigative report, the DCF Office of Civil Rights will review the report to determine if there is a need for additional information or immediate corrective action. Upon completion of the review, it will be forwarded to the Headquarters Human Resources Director for final review and approval.

(2) If the investigative report is deemed to be insufficient the report will be returned to the investigator for further handling. Review comments may be noted in writing to help guide any additional work on the complaint.

6-11. Requesting Exceptions and Extensions. Requests for exceptions to the procedures described in this operating procedure or extensions of the time required to complete the investigative report may be made by the Civil Rights Officer to the Assistant Staff Director for Civil Rights. Such requests will include the reasons for the exceptions or extensions; any additional time needed; the anticipated completion date; and any recommended alternative procedure or action. The Civil Rights Officer will contact the Assistant Staff Director for Civil Rights when:

- a. Requesting technical assistance.
- b. Requesting an extension of the due date for the investigative report.
- c. Contacted by investigators outside of the agency.
- d. There is a union grievance pending.
- e. There may be the appearance of a conflict of interest or other need to reassign responsibility for the investigation.
- f. Litigation has been initiated on behalf of the Charging Party relating to the complaint.
- g. Requesting exceptions, or waiver from established procedures or reporting requirements.

6-12. Complaint Decision and Disposition. Based on the investigative report, findings and recommendations, the Assistant Staff Director for Civil Rights will determine the Department's position relative to each complaint.

a. Internal Complaints.

(1) If there is a finding of "no reasonable cause", the complaint will be dismissed, the complaint file closed. The Charging Party and appropriate persons will be notified in writing of the finding and closure. If the Charging Party does not agree with the finding, they may file a complaint externally with one of the agencies listed above.

(2) If there is a finding of "reasonable cause" or a Letter of Violation is issued, conciliation will be initiated by the DCF Office of Civil Rights with the appropriate parties or persons.

b. External Complaints.

(1) If the Department finds "no reasonable cause" the DCF Office of Civil Rights will prepare a position statement supporting the finding and will submit the statement along with supporting

documentation to the external agency that will make the final determination or disposition of the complaint.

(2) If the Department finds “reasonable cause” or a Letter of Violation is issued the DCF Office of Civil Rights will initiate conciliation with the appropriate persons.

(3) If the external agency issues a Letter of Violation or finds “reasonable cause”, the external agency will initiate conciliation coordinated internally by the DCF Office of Civil Rights with the appropriate Department officials.

6-13. Restricting Use of Information.

a. Information in the investigative report is confidential pursuant to 119.071(2)(g)1.a., F.S. However, once the Department’s position and the external agency’s position have been determined certain materials may be obtained as part of the discovery process when suits are filed, or may be made available to Charging Parties.

b. All request for review of investigative materials or reports must be directed to the Assistant Staff Director for the DCF Office of Civil Rights, who is the official custodian of such records.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

DENNISE G. PARKER
Human Resources Director

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

This operating procedure has been updated to reflect the Department’s current requirements for providing services to applicants, customers, and companion with disabilities; to reflect the Department’s current organizational structure; and to include requirements mandated by the U.S. Department of Health and Human Services.