

5122:2-1-06

Board and agency dispute resolution.

(A) The purpose of this rule is to provide procedures for the resolution of non-Medicaid contract disputes between a mental health board or an alcohol, drug addiction and mental health services boards and the agencies with which they contract for the provision of mental health services, as well as to identify the role of the department of mental health in the dispute resolution process.

(B) The provisions of this rule apply when either party proposes not to renew the contract or either party proposes substantial changes to the terms of the contract.

(C) Notice of non-renewal or substantial changes of the contract shall be given at least one hundred twenty calendar days before the expiration of the contract. Whenever a party provides a one hundred twenty day notice of non-renewal or substantial change, the party giving the notice shall state the reason(s) for non-renewal or describe the substantial change(s). During the first sixty calendar days both parties shall attempt to resolve any dispute through good faith collaboration and negotiation in order to continue to provide services to persons in need. Good faith collaboration and negotiation for the first thirty calendar days shall consist of the following:

(1) The first thirty calendar days shall consist of collaboration and negotiation between the parties only, which, at minimum, shall include:

(a) Each party shall provide a written statement to the other that identifies the specific issue(s) about which the party intends to negotiate and a brief explanation of the party's position and/or interest regarding each identified issue.

(b) Representatives of each party shall meet at least once to negotiate regarding the issues identified pursuant to paragraph (C)(1)(a) of this rule.

(2) If the dispute is not resolved in the first thirty calendar days, then, if both parties agree to it, the second thirty calendar days will consist of mediation as outlined in paragraph (F) of this rule.

(D) Notification to Department

(1) If the dispute is not resolved sixty calendar days before the expiration of the contract either or both parties may notify the department of mental health of the unresolved dispute in order to initiate a dispute resolution process.

Notification may be provided prior to sixty days if either party determines that the initial good faith negotiation is not progressing to a resolution of the dispute.

- (2) The notice shall be directed to the director of the department and it shall include a copy of the contract in dispute and a short statement of the issue(s) in dispute.
- (3) If only one party notifies the department, the director shall contact the other party within seven calendar days to determine its position, issues and willingness to participate with dispute resolution processes.
- (4) A decision to not participate in the dispute resolution process shall be in writing and submitted to the other party and the department.
- (5) The department may require the parties to submit to non binding arbitration upon notification that either party is unwilling to participate in mediation.

(E) Department's role in dispute resolution

- (1) The department will serve as a resource to the parties to assist them in obtaining the dispute resolution services. The department's assistance may consist of:
 - (a) Providing a list of dispute resolution professionals throughout the state. The list will identify the dispute resolution professional's location, contact information, experience (including prior experience with the mental health system), training and references as provided by the dispute resolution professional;
 - (b) Assisting with communication between the parties as requested; or
 - (c) Requiring the parties to submit to non binding arbitration at the conclusion of mediation or upon notification that either party is unwilling to participate in mediation.
- (2) The department will not intervene in the content of the dispute, except to the extent that either party has alleged non-compliance with department statute, rules or regulations. In that event the department's role shall be limited to serving as an expert in the process, and the department will recommend a neutral, third party to assist with obtaining the dispute resolution services.
- (3) The department shall notify both parties in writing of the decision and rationale for requiring or not requiring non binding arbitration within ten business days of receipt of a written request for arbitration.
- (4) The department shall notify the department of alcohol and drug addiction services upon receipt of notification under paragraph (D) of this rule.
- (5) The department shall prepare an annual report on all actions taken under this rule.

(F) Mediation

- (1) Participation in mediation services is voluntary.
- (2) Each party must agree to engage the individual to serve as mediator. In the event that the parties cannot reach such agreement, by joint letter, the parties will request the department to submit a panel of three or five names of persons considered qualified by the department to mediate disputes. Representatives of the parties shall strike names from the panel alternatively until one name remains. That person shall serve as the mediator.
- (3) The mediator will not mediate a matter if the mediator has:
 - (a) A personal interest in the outcome of the mediation;
 - (b) A past or current personal relationship with either of the parties; or
 - (c) A current business relationship with either of the parties.
- (4) The mediator shall facilitate a settlement between the parties.
- (5) If the parties reach a mediation agreement, the mediator will notify the department in writing that the issue(s) have been resolved.
- (6) Either party may ask the other party to agree that the agreement be made binding upon the parties by a written acknowledgment to the requesting party. The written acknowledgment shall be provided to the department within ten calendar days from the date of the mediator's notice that the issue was resolved.
- (7) If the parties are unable to reach a settlement through mediation, then within fifteen days of the issuance of the notice by the mediator that the matter was not resolved, either party may ask the department for assistance to arrange for non-binding arbitration.

(G) Non Binding Arbitration

- (1) The department shall arrange for a qualified arbitrator, using the standards approved by the American arbitration association as a guide for qualifications. Each party will agree to the engagement of the arbitrator. In the event that the parties cannot reach such agreement, by joint letter, the parties will request the department to submit a panel of three or five names of persons considered qualified by the department to arbitrate disputes. Representatives of the parties shall strike names from the panel alternatively until one name remains. That person shall serve as the arbitrator.

- (2) Notice of arbitration will indicate that the matter must be resolved within twenty calendar days of the expiration of the contract, unless the parties agree to an extension.
- (3) An arbitrator may not have an interest in the outcome of the dispute or a business or personal relationship to any party in the arbitration.
- (4) The arbitrator may issue orders to compel the completion of the record and set arbitration dates and deadlines.
- (5) Within thirty calendar days the arbitrator shall issue a written recommendation setting forth the findings of fact, and the apportionment of fees for mediation and arbitration services. The written recommendation shall include:
- (a) What action will be taken by whom;
 - (b) The time period for the action to be completed; and
 - (c) Other details related to the arbitration.
- (6) The arbitrator's written recommendation is non-binding. The parties may agree to make it a binding resolution by formalizing the terms as a part of their existing contract, or entering into a separate contract to give the terms effect.
- (H) All discussions held during mediation and/or arbitration shall be deemed to be for settlement purposes under State and Federal Evidence Rule 408; shall be inadmissible as evidence in any legal proceeding; and shall be treated as strictly confidential by the participants.
- (I) Nothing in this rule shall be construed as prohibiting either party from pursuing any legal action.
- (J) Mediation and/or arbitration fees
- (1) The fee, if any, of the mediator and/or arbitrator shall be divided equally between the parties.
 - (2) Each party shall otherwise be responsible for his own expenses arising from the utilization of the mediator and/or arbitrator.

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Certification

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