

Mediation

Mediation is about:

- A fair process where all parties are assured an equal voice
- Strengthening and equalizing the relationship between the parties in disagreement
- Providing safe opportunities for consumers to constructively challenge decisions
- Increasingly creative solutions through working together to resolve issues

Roles:

- **Mediator:** To facilitate a fair process that, when possible, results in the disputing parties voluntarily arriving at a mutually agreeable solution(s).
- **Consumer:** Mediation is available as one conflict resolution alternative when you have a complaint or disagreement about your services. It is your decision if you want to use this or any other conflict resolution option.
- **CCB or Service Agency Disputant:** To voluntarily participate in mediation when requested by a consumer or initiated by you. Mediation is a value added tool that can result in improved consumer services.
- **Support Person:** To help the consumer have an equal voice and to balance negotiating power between the disputing parties.
- **CCB Liaison:** To inform all pertinent parties of the availability of mediation. To organize and keep the process working efficiently and for consumers. To serve the liaison function for consumers when requested to do so by consumers.
- **Office of Field Services:** To be the receiving point for mediation requests. To ensure the availability of mediators. To serve the liaison function when so requested by consumers.

Process

- **Phase I-Mediation Requested**
 - A. Request may be made verbally or in writing by
 - § Consumer
 - § Parent of a minor
 - § Guardian
 - § Authorized representative
 - § CCB or SA representative
 - B. Depending on consumer preference, the request may be initiated through
 - § CCB liaison
 - § Office of Field Services
 - C. At the consumer's option, the source that receives the request for mediation assists with completing the Mediation Request Form.
 - D. If the request is initiated by a CCB or SA disputant, it must be submitted through the CCB Liaison.
- **Phase II-Interest of Other Disputant in Mediation Determined**
 - A. If the CCB Liaison receives the request for mediation, he or she presents the request to the other disputant to determine interest in mediating the issue.

- B. If the Office of Field Services receives the request from the consumer, that Office contacts the CCB Liaison for determination of the other disputant's interest in mediating the issue.
- C. If there is agreement by both parties to mediate the issue, the CCB Liaison forwards the request and/or decisions to mediate to the Office of Field Services.
- D. If the other disputant does not agree to mediate, the CCB Liaison documents the reason(s) for refusal to mediate and forwards the documentation, along with a copy of the mediation request to the Office of Field Services.

The request is terminated.

- **Phase III-Request Review and Approval**

- A. The Office of Field Services receives the request and reviews it for appropriateness. (Note: if the request was initiated through the Office of Field Services, the review was completed at that time.)
- B. If the request is approved, proceed to Phase IV.
- C. If the request is denied, the Office of Field Services prepares a letter of denial stating the reasons for denial A copy is sent to:
 - a. The person who initiated the request;
 - b. The other disputant if he or she is aware of the request for mediation. If not a copy is sent at the preference of the requesting party.
 - c. DDS

The request is terminated.

- **Phase IV-Support Person Selected**

- A. If a support person is requested by the consumer, the consumer may
 - a. Recruit the support person, or
 - b. Request a support person from the CCB list.
- B. At consumer request, assistance in selecting a support person will be provided by the CCB Liaison and/or the Office of Field Services.
- C. If the selected support person is not Mediation trained, orientation to his or her role will be provided by the CCB liaison or the Office of Field Services.

- **Phase V-Mediator Selected**

- A. The Office of Field Services presents the list of 3 mediators to the disputing parties with instructions for the party requesting mediation to eliminate one name.
- B. The other disputant is notified of the eliminated name and requested to eliminate one of the two remaining names.
- C. The mediator is the person whose name remains on the list.
- D. The Office of Field Services contacts the mediator, provides the names and contact information of the disputing parties, and confirms the start date.

- **Phase VI – Mediation**

- A. The mediator contacts the disputing parties and, if needed, support person to arrange interviews.
- B. The mediator contacts the CCB liaison to inform of the scheduled interviews and request needed assistance with logistical arrangements.
- C. The mediator conducts the interviews.
- D. The mediation meeting is held. Additional meetings are scheduled as needed.

- E. If agreement is reached, the mediator writes the agreement. All parties sign the agreement and complete satisfaction and reimbursement forms.
- F. If an agreement is not reached, the following needs to occur:
 1. The mediator completes the report. If the disagreement involves a non-disputable issue, the mediator may include recommendations for how the parties might proceed toward resolution of the disagreement. The parties can accept or reject the recommendations.
 2. The parties review and sign the report and complete satisfaction and reimbursement forms.
 3. Each party will submit a written statement regarding the disagreement. The statement shall include what each party will do in relation to the grievance and any mediator recommendations. (Refer to the “Disputant Response Form.”)
- G. Required documentation is submitted to the Office of Field Services.
- H. **The Process is terminated.**

WHAT CAN BE REFERRED TO MEDIATION?

The intent is that the benefits of mediation be fully realized. This will only occur if good faith efforts to bring it into play are exercised. As such **most disputes and/or grievances** are appropriate for mediation. Examples of what might be referred to mediation follow. (Note: these are repeated under the *Consumer* role description.)

When a consumer believes that he/she is:

- not receiving needed services;
- not receiving the services agreed to by the Individualized Planning Team;
- receiving services that are not right for him/her;
- receiving services that are not as good as they should be; or
- receiving services that are not working for him/her.

These are examples only, not an exhaustive list. Other issues that affect a consumer’s services can also be referred to mediation.

Disallowed Mediation Issue

Following is the one, disallowed mediation issue.

An applicant’s denial of eligibility for services or supports..

Eligibility determination disputes will be handled using the existing dispute resolution processes. This includes use of the informal negotiation step unless that step is waived by mutual consent of the involved parties.

The Steering Committee and Quality Assurance Task Force agree that denial of eligibility for services or support should be excluded from mediation for the following reason:

- Eligibility is a professionally based decision reached after review of appropriate evaluation information. Disputes and disagreements regarding the accuracy or appropriateness of such evaluations are best left to persons technically trained in such matters. This type of issue is not amendable to creative solution finding, compromise or individual interests—the strongholds of mediation.

Inappropriate Mediation Issues

The Steering Committee also recognizes that there will be circumstances that are not appropriate mediation referrals. Generally, these are “*red flag*” issues or issues that require immediate attention. Following are examples of three such issues. Also included is a general category that addresses issues that can be more efficiently remedied through administrative intervention.

1. ***Allegations or suspicions of physical or emotional abuse, neglect and/or financial or other forms of exploitation.*** Such allegations or suspicions require immediate attention. The involved agency should follow established protocol for handling such allegations.
2. ***Instances of actual or proposed human rights restrictions.*** The established procedures for protecting human rights must be adhered to. Unauthorized restrictions of human rights should be immediately corrected. Emergency use of human rights restrictions should be followed by prompt referral to and decision by the human rights committee. In other words, established policy should be followed.
3. ***Issues where a decision places the consumer at risk of grave harm, injury or death, or the agency in a legally untenable position.*** An example of this is a consumer’s refusal to take medication that is critical to sustaining his or her life or which, in the absence of, may result in grave harm to his/her health or well being.
4. ***Anything clearly established in statute(s), rules and regulations or contract.***
A consumer should not be placed in a dispute or grievance situation over what a CCB or SA is obligated to do as part of its approved status. For example, a consumer should not be expected to use personal funds to pay for equipment or other items or services that are part of the reimbursement rate. Should such situations occur, administrative action can provide faster, more efficient solutions than mediation. Of course, mediation remains an alternative should that be the choice of the consumer or his/her parent (if a minor), guardian or authorized representative.

The above are examples, not an exhaustive list. Experience will provide ongoing opportunities to refine and expand the overall area of appropriate and inappropriate mediation issues.

WHO CAN REQUEST MEDIATION?

In that mediation is an addition to the existing dispute resolution process of the Colorado Department of Human Services, Developmental Disabilities Services, the same parties that may dispute a decision or grieve an action or non-action pursuant to these regulations may request mediation. (The one exception to disputable issues is presented in the next section.) These include:

- § a consumer
 - § parents of a minor child
 - § a guardian
 - § an authorized representative.
- (See the *Attachments* section for sample *Authorized Representative* wording.)

Also, because mediation is an informal, voluntary and mutual process aimed at resolving issues as close to the sources of conflict as possible, a representative of the service delivery system can request mediation.

How Are Mediators Requested?

Mediator request forms are available through the CCB Liaison and the Office of Field Services. Also, forms are available to any person or agency interested in making the forms available to consumers. Copies of the forms may be requested from the Office of Field Services by calling 1-888-815-6684 or writing to them at the following address.

Office of Field Services
Colorado Department of Human Services
1575 Sherman Street, Second Floor
Denver, CO 80203

At the request of a consumer, the CCB Liaison will help her/him complete the form and initiate the request through the Office of Field Services. If a consumer chooses, a support person may provide that assistance or the request may be made directly to the Office of Field Services. At consumer request, that Office will also provide form completion assistance.