

**STATE OF CONNECTICUT
REGULATION
OF**

Name of Agency

Department of Mental Health and Addiction Services

Concerning

Subject Matter of Regulation

Fair Hearings

Section 1. Sections 17a-451 (t)-1 to 17a-451 (t)-15 inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 17a-451 (t)-1. Definitions

As used in sections 17a-451 (t)-1 to 17a-451 (t)-19, inclusive, of the Regulations of Connecticut State Agencies:

(1) “Client” means a person with a psychiatric disability, a substance use disorder, or both, who has received mental health or substance use disorder services, is receiving mental health or substance use disorder services, or is seeking to receive mental health or substance use disorder services from a covered service provider;

(2) “Client rights officer” means a person designated by a covered service provider to receive and investigate client grievances;

(3) “Commissioner” means the Commissioner of the Department of Mental Health and Addiction Services (DMHAS);

(4) “Covered service provider” means any DMHAS program or facility that provides direct mental health services, substance use disorder services or both, and any person or entity that has

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a contract with DMHAS to provide direct mental health, substance use disorder services or both;

(5) “DMHAS” means the Department of Mental Health and Addiction Services;

(6) “Final decision” means a final decision as defined in section 4-166 of the Connecticut General Statutes;

(7) “Final determination” means a written decision by an official designated by the Commissioner which constitutes the final administrative action by DMHAS after further review of a grievance filed by a client;

(8) “Further review” means a process, requested by the client or by a person authorized by law to act on behalf of the client, by which an official designated by the Commissioner examines the written decision of the head of the covered service provider on a grievance;

(9) “Grievance” means any client complaint which states that a covered service provider or staff member of a covered service provider has denied, involuntarily reduced or terminated mental health or substance use disorder services, except that sections 17a-451 (t)-1 to 17a-451 (t)-19, inclusive, do not apply to matters assigned to the exclusive jurisdiction of the Psychiatric Security Review Board;

(10) “Hearing officer” means a person appointed by the Commissioner to preside over a fair hearing and to provide the Commissioner with a proposed decision. Such person may be an employee of DMHAS;

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(11) “Mental health service” means any service or treatment provided by a covered service provider to a client for the purpose of arresting, reversing, ameliorating, or stabilizing the client’s psychiatric disability, that includes but shall not be limited to: counseling, case management, psychiatric treatment, medication, crisis intervention, vocational services, residential services, peer supports, recovery support services, and recreational and social services, but excludes special education;

(12) “Substance use disorder service” means any service or treatment provided by a covered service provider to a client for the purpose of arresting, reversing, ameliorating or stabilizing the client’s substance use disorder, that includes but shall not be limited to: medical, psychiatric and biopsychosocial assessments, detoxification, opioid substitution therapy, individual, group and family counseling; peer counseling; vocational counseling; case management and recovery support services, but excludes special education.

Sec. 17a-451 (t)-2. Applicability

Only those covered service providers supported partially or in full with DMHAS funds are subject to sections 17a-451 (t)-1 to 17a-451 (t)-19 inclusive of the Regulations of Connecticut State Agencies. The Commissioner may determine that a mental health or substance use disorder service offered by a covered service provider shall be exempt from sections 17a-451 (t)-1 to 17a-451 (t)-19 inclusive of the Regulations of Connecticut State Agencies, if the

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Commissioner makes a written finding that:

- (1) DMHAS funding to the covered service provider for such mental health or substance use disorder service does not exceed 20% of its budget; and
- (2) The covered service provider has an adequate procedure for the redress of grievances relating to such mental health or substance use disorder service.

Sec. 17a-451 (t)-3. Posting

All covered service providers shall prominently post a summary version of this regulation, in a form provided by the Commissioner, together with the name and telephone number of the relevant client rights officer, and a list of available advocacy programs, in every unit, mental health or substance use disorder service location, and client lounge operated by the covered service provider.

Sec. 17a-451 (t)-4. Notice

If a covered service provider denies, involuntarily reduces or terminates a mental health or substance use disorder service, then the covered service provider shall provide the client with a written notice of the action taken and the reason for such action. The notice shall also inform the client of the following procedures available to the client if the client is dissatisfied with the action:

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(1) Filing a grievance as specified in section 17a-451 (t)-5 of the Regulations of Connecticut State Agencies;

(2) Filing an accelerated grievance as specified in section 17a-451 (t)-7 of the Regulations of Connecticut State Agencies; and

(3) Filing a request for continuation of mental health or substance use disorder services as specified in section 17a-451 (t)-8 of the Regulations of Connecticut State Agencies.

Sec. 17a-451 (t)-5. Filing of grievances

(a) A written grievance may be filed by a client or by a person authorized by law to act on behalf of the client with the client rights officer. Except as provided under section 17a-451 (t)-7 of the Regulations of Connecticut State Agencies, a grievance shall be filed not later than forty-five calendar days after the receipt of notice of the action complained of, unless good cause is shown for a late filing, as determined by the client rights officer. A grievance may be withdrawn at any time. Withdrawal of a grievance shall not affect any covered service provider corrective action begun under section 17a-451 (t)-6 of the Regulations of Connecticut State Agencies.

(b) Each covered service provider shall designate a person to serve as a client rights officer. A covered service provider may designate another covered service provider's client rights officer to serve as its client rights officer. A covered service provider may also designate another person

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to act as a client rights officer, if the originally designated client rights officer is not available. A person employed by the covered service provider as a patient advocate shall not serve as a client rights officer.

(c) A grievance shall be filed in writing with the client rights officer. Upon request, staff members of a covered service provider shall assist clients in preparing written grievances and submitting them to the client rights officer. A copy of all records concerning a grievance shall be kept by the client rights officer.

(d) The client rights officer shall provide written notice to all clients filing a grievance of available advocacy programs and the client's right to select an advocate of his or her choice to assist in pursuing the grievance, subject to the provisions of subsection (e) of this section. If a client selects an advocate to assist in pursuing the grievance, the client shall provide the client rights officer with written notice of the client's selection and the client shall sign a consent to disclose information and records protected by state and federal law to the advocate.

(e) A covered service provider may disapprove an advocate selected by the client who is receiving mental health or substance use disorder services from the same covered service provider on the ground that it is clinically detrimental.

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Sec. 17a-451 (t)-6. Grievance review procedure

(a) Not later than seven days after the filing of a grievance, the client rights officer shall acknowledge receipt of the grievance. The client rights officer shall interview the client and other appropriate persons, examine all relevant records, and take any other action necessary to review the grievance. A client rights officer may designate another member of the covered service provider's staff to review a grievance in an attempt to resolve a grievance, but ultimate responsibility for the written proposals and reports as specified in subsection (e) and (f) of this section shall be that of the client rights officer's. Except as specified in subsections (c) and (e) of this section and section 17a-451 (t)-7 of the Regulations of Connecticut State Agencies, the grievance review, disposition and, if necessary, decision of the head of the covered service provider shall be completed not later than twenty-one calendar days after receipt of a grievance, unless the head of the covered service provider authorizes an additional fifteen calendar days, with written notice to the client.

(b) The client rights officer shall, with the client's permission, permit the client's advocate to assist the client at any grievance meeting that is held with the client to attempt to resolve the grievance. The client rights officer may reschedule a grievance meeting if the client is unable to attend due to circumstances beyond the client's control. Efforts shall be made by all parties to limit rescheduling to not more than one time.

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(c) If, at any time during the grievance inquiry, the client rights officer reasonably suspects a violation of a DMHAS work rule (for DMHAS facilities), a covered service provider personnel policy, or a criminal statute, the client rights officer shall immediately refer the suspected violation to the appropriate entity for investigation. Upon referral, the client rights officer shall provide written notice to the client and the client's advocate, if applicable, of the referral and that a representative from the referred entity may contact the client to arrange an interview.

The client rights officer shall cooperate with any investigation, conducted by the referred entity. While the referred entity investigates a suspected violation, the client rights officer shall defer review unless a portion of the grievance may be resolved without interfering with the referred entity's investigation. If a portion of the grievance may be resolved while the referred entity conducts its investigation of a suspected violation, the client rights officer shall review the remainder of the grievance as specified in subsections (a) through (f) inclusive of this section. If the client rights officer deferred his or her review of the grievance while the referred entity investigated the suspected violation, once the referred entity's investigation of the suspected violation is concluded, the client rights officer shall resume the grievance review as specified in subsections (a) through (f) inclusive of this section.

(d) The client rights officer shall check periodically on the status of any referral made under subsection (c) of this section. Upon the conclusion of the investigation by the appropriate

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authority, the client rights officer shall provide written notice to the client and the client's advocate if applicable, stating that the process has been completed.

(e) Unless a referral under subsection (c) of this section has been made, the client rights officer shall attempt to mediate the client's grievance between the client and the covered service provider, or take any action likely to assist the parties in resolving the grievance. The client rights officer shall encourage all parties to accept an informal resolution. If the client rights officer believes that an informal resolution is possible, the client rights officer shall prepare a written proposal which summarizes the nature of the dispute and the proposed informal resolution. Such written proposal shall not contain any information about other clients unless such disclosure is required or permitted by law. The client rights officer shall inform the client that the client has not more than ten business days, after receipt of such written proposal, in which to accept the proposed informal resolution, in whole or in part and sign the written proposal which shall terminate the grievance, or to request a formal decision by the covered service provider on the grievance, or to withdraw the grievance. The time during which a client is considering a proposed informal resolution shall not be counted towards the time periods under subsection (a) of this section. Failure of the client to respond in writing to a proposed informal resolution not later than ten business days after its receipt shall be treated as a withdrawal of the grievance, unless good cause for reinstatement of the grievance is shown.

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(f) If there is no proposed resolution, or if the proposed resolution is not agreed to by the client, the client rights officer shall prepare a written report of the grievance inquiry, and present it to the head of the covered service provider or the covered service provider's designee, and to the client. The client and the client's advocate shall be given the opportunity to present additional material and, upon request, to appear in person before the head of the covered service provider or such designee. The head of the covered service provider shall provide a written decision to the client, including a statement of any action to be taken and the client's right to further review.

Sec. 17a-451 (t)-7. Accelerated grievances

(a) An accelerated grievance may be filed by a client or a person authorized by law to act on the client's behalf regarding, (1) the involuntary reduction or termination of opioid substitution therapy, or (2) the termination of substance use disorder services consisting of inpatient treatment scheduled for a period of not more than thirty calendar days. Such grievance shall comply with the requirements of section 17a-451 (t)-5 of the Regulations of Connecticut State Agencies except that it shall be filed not later than five business days after the receipt of notice of the action complained of as specified in section 17a-451 (t)-4 of the Regulations of Connecticut State Agencies.

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(b) An accelerated grievance shall be processed as specified in section 17a-451 (t)-6 of the Regulations of Connecticut State Agencies except that the inquiry, disposition, and if necessary the decision of the head of a covered service provider or covered service provider's designee shall be completed not later than five business days after the receipt of the grievance, unless the head of the covered service provider or such designee authorizes, and the client or person authorized by law to act on the client's behalf consents in writing, to additional time for completion, in increments of not more than five business days.

Sec. 17a-451 (t)-8. Requests for continuation of mental health or substance use disorder services

(a) If a covered service provider or the covered service provider's designee terminated mental health or substance use disorder services without an offer of modified mental health or substance use disorder services, then a request for continuation of mental health or substance use disorder services may be filed by a client or a person authorized by law to act on the client's behalf. The request for continuation of mental health or substance use disorder services shall be filed in writing with the Commissioner or the Commissioner's designee not later than five business days after the receipt of notice of the termination of mental health or substance use disorder services.

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(b) The Commissioner or the Commissioner's designee shall issue a decision regarding the request for continuation of mental health or substance use disorder services, not later than five business days after receiving the written request. The Commissioner or the Commissioner's designee may order the continuation, modification, or termination of the mental health or substance use disorder service. The Commissioner or the Commissioner's designee shall consider the clinical needs of the client and the potential for any risk of harm to the client, or others or to property. The Commissioner or the Commissioner's designee may modify any order entered as specified in this section at any time based on these same considerations.

(c) Any order entered as specified in this section shall automatically expire upon the occurrence of any one of the following events:

- (1) Implementation of an informal resolution, or
- (2) Withdrawal of the grievance, or
- (3) Fifteen business days elapse after the client's receipt of the written decision of the head of the covered service provider and further review is not requested, or
- (4) Thirty calendar days elapse after the date of the mailing of the final determination and a fair hearing is not requested, or
- (5) A request for a hearing is disposed of as specified in section 17a-451 (t)-13 of the Regulations of Connecticut State Agencies, or

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(6) A final decision is issued by the Commissioner.

Sec. 17a-451 (t)-9. Further review

(a) A client may request the Commissioner or the Commissioner's designee to conduct a further review of a decision of a covered service provider not later than fifteen business days after the client's receipt of the covered service provider's decision, unless the time is extended by the Commissioner or the Commissioner's designee for good cause shown. If a decision of a covered service provider is not more than seven business days overdue, the client may treat it as a denial and request further review. Additionally, if the covered service provider fails to implement an informal resolution that was agreed to by the client, and where such failure is not due to the client's action or inaction, the client may request further review. A request for further review shall be in writing, and shall state what decision of the covered service provider is being reviewed and the grounds upon which the request is based.

(b) Upon receipt of the request for further review, the Commissioner's designee shall conduct such additional investigation as the Commissioner's designee determines is necessary, receive additional information from the parties, and may convene a conference of all parties to be held not later than twenty-one calendar days after the receipt of the request for further review. If the grievance cannot be informally resolved the Commissioner's designee shall issue a written

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decision not later than fifteen calendar days after the date of the conference, or not later than twenty-one calendar days after receipt of the request for further review, if no conference is held. The written decision of the Commissioner's designee shall serve as DMHAS' final determination.

(c) If the final determination results in the denial, involuntary reduction or termination of mental health or substance use disorder services, it shall include a statement informing the client that the client may request a hearing as specified in section 17a-451 (t)-10 to 17a-451 (t)-19, inclusive, of the Regulations of Connecticut State Agencies.

Sec. 17a-451 (t)-10. Eligibility for a hearing

Any client who has received an unfavorable final determination from DMHAS and (a) requested and was denied a mental health or substance use disorder service from a covered service provider, or (b) received mental health or substance use disorder services that were involuntarily reduced or terminated, may request a hearing as specified in sections 17a-451 (t)-10 to 17a-451 (t)-19, inclusive, of the Regulations of Connecticut State Agencies.

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Sec. 17a-451 (t)-11. Request for a hearing

A request for a hearing shall be mailed to the Commissioner not later than thirty calendar days after the date of mailing of the final determination. A request for a hearing shall identify the mental health or substance use disorder service that has been denied, involuntarily reduced or terminated, and shall specify the date of the final determination on the matter.

Sec. 17a-451 (t)-12. Scheduling and notice of hearing

Upon receipt of a request for a hearing, the Commissioner shall designate a hearing officer. The hearing officer shall schedule a hearing to be held not later than forty-five calendar days after the date of the request, provided that if a request for an expedited hearing is made by a party, the hearing officer shall attempt to expedite the hearing if the hearing officer determines that a delay would be significantly damaging to that party. The hearing officer shall acknowledge a client's request for a hearing in writing and provide the client and the client's advocate, if applicable, written notice of the hearing. The notice of the hearing shall comply with the requirements of section 4-177 of the Connecticut General Statutes. If the matter involves a covered service provider, the covered service provider shall be notified by the hearing officer that it may participate in the hearing. The hearing officer, upon notice to the covered service provider, DMHAS, the client, and the client's advocate, if any is known, may reschedule the hearing.

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Sec. 17a-451 (t)-13. Resolution of request for hearing

(a) A request for a hearing shall be resolved pursuant to section 4-177 of the Connecticut General Statutes in one or more of the following ways:

(1) The client's withdrawal of the request for hearing. The withdrawal shall be voluntary, in writing to the Commissioner and made at any time prior to the hearing. The withdrawal shall be acknowledged in writing by the hearing officer and shall be the final action on the complaint.

(2) Dismissal of the request by the hearing officer. This action may be taken, if:

(A) The client fails to appear at the designated time and place; or

(B) The issue is resolved prior to or during the hearing by voluntary agreement of both parties.

(3) Final decision by the Commissioner after receiving a proposed decision from the hearing officer following a hearing.

(b) Nothing in this section shall preclude the issuance of any necessary interim order by the hearing officer during the pendency of the proceedings.

Sec. 17a-451 (t)-14. Conduct of proceedings

The hearing shall be conducted as a contested case under the provisions of Chapter 54 of the Uniform Administrative Procedure Act, sections 4-166 to 4-189, inclusive, of the Connecticut

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General Statutes. The client has the burden of proving by a preponderance of evidence that the final determination from DMHAS does not comply with state and federal law or is clearly erroneous.

Sec. 17a-451 (t)-15. Witnesses and testimony

All witnesses shall be under oath. The client may act as a witness on the client's own behalf, and may bring additional witnesses. DMHAS and any affected covered service provider may present any appropriate witness.

Sec. 17a-451 (t)-16. Exhibits

If a witness wishes to retain possession of a document, a copy of the original may be admitted, or the hearing officer may dictate the relevant portions into the record.

Sec. 17a-451 (t)-17. Subpoenas

The hearing officer shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers.

Sec. 17a-451 (t)-18. Record of proceedings

A mechanical recording of the proceedings shall be made for use by the hearing officer in preparing the proposed decision and shall be made available to any party upon request.

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Sec. 17a-451 (t)-19. Final decision

Upon conclusion of the hearing, the hearing officer shall prepare a proposed written decision and shall mail it to the parties by certified mail, return receipt requested, as well as providing it to the Commissioner. The proposed decision shall contain a statement of the reasons for the proposed decision and a finding of facts and conclusions of law on each issue of fact or law necessary to the proposed decision. Any party may, not later than fifteen calendar days after the mailing of the proposed decision, provide the Commissioner with written argument in support of, or in opposition to, said proposed decision, and may request the opportunity for oral argument. The Commissioner shall render a final decision which may, in whole or in part, accept, modify or reject the proposed decision.

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Statement of Purpose:

This proposed amendment to 17a-451 (t)-1 to 17a-451 (t)-15, inclusive, of the Regulations of Connecticut State Agencies is to add a fair hearing process for persons receiving substance use services from the Department of Mental Health and Addiction Services. The proposed amendment also creates an accelerated fair hearing process for certain services provided by DMHAS and makes technical changes to the regulation.

PA 99-234 amended the statutory language that created the fair hearing process for the denial, involuntary reduction or termination of mental health services to include substance use services.