

# TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

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## SUBCHAPTER 140-10.1

### AMERICANS WITH DISABILITIES ACT AND REHABILITATION ACT GRIEVANCE PROCEDURE

**Part 001**      **General Provisions**      Act of 1990

§ 140-10.1-001      Compliance with      **Part 100**      **Grievance Procedure**  
§ 504 of the Rehabilitation Act of 1973 and  
Title II of the Americans with Disabilities      § 140-10.1-101      Grievance Procedure

Subchapter Authority: 1 CMC §§ 2603 and 2605.

Subchapter History: Amdts Adopted 20 Com. Reg. 16305 (Dec. 15, 1998); Amdts Adopted 18 Com. Reg. 14468 (Nov. 15, 1996); Adopted 17 Com. Reg. 13554 (July 15, 1995).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(f) grants the Department the power and duty to administer all government-owned health care facilities. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles, and effected numerous other revisions. According to Executive Order 94-3 §§ 105 and 305:

Section 105. Department of Public Health.

The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

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Section 305. Department of Public Health.

(a) Board of Public Health and Environmental Quality. The Board of Public Health and Environmental Quality is abolished and its functions transferred to the Secretary of Public Health.

(b) Federally-Mandated Councils. The State Planning Council on Development Disabilities and the State Rehabilitation Advisory Council are allocated to the Department of Public Health for the purposes of administration and coordination.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

Public Law 16-51 (effective Jan. 15, 2010), the “Commonwealth Healthcare Corporation Act of 2008,” codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

#### **Part 001 - General Provisions**

#### **§ 140-10.1-001 Compliance with § 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990**

## TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

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(a) It is the policy of the Department of Public Health to comply with the requirements of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations promulgated thereunder at 45 CFR part 84, and title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and regulations promulgated thereunder at 28 CFR part 35. These regulations provide, in part, that “[n]o qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance,” and that “[n]o qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.” See 45 CFR § 84.4(a), and 28 CFR § 35.130(a), respectively.

(b) If any individual has reason to believe that the Department of Public Health is not complying with the requirements of § 504 of the Rehabilitation Act of 1973 or title II of the Americans with Disabilities Act of 1990, and their respective regulations, he or she may file a grievance pursuant to the procedure set forth below. Any person wishing to examine the above referenced statutes and regulations may contact Ms. Terri Tripp, Deputy Secretary for Hospital Administration, at the Commonwealth Health Center (phone: 234-8950). Ms. Tripp is one of the individuals designated to coordinate the efforts of the Department of Public Health in complying with the regulations implementing § 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 20 Com. Reg. 16305 (Dec. 15, 1998); Amdts Adopted 18 Com. Reg. 14468 (Nov. 15, 1996); Adopted 17 Com. Reg. 13554 (July 15, 1995).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The 1996 and 1998 amendments republished the grievance procedure in its entirety. The 1996 and 1998 amendments amended subsection (b). The Commission corrected the citation to title II of the Americans with Disabilities Act pursuant to 1 CMC § 3806(g).

### **Part 100 - Grievance Procedure**

#### **§ 140-10.1-101 Grievance Procedure**

(a) Any person who believes he or she has been subjected to discrimination on the basis of disability (the “complainant”), in contradiction of the policies stated above, may file a grievance under the procedure in this part. It is against the law for the Department of Public Health to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

(b) The complainant must submit his or her grievance to Ms. Terri Tripp\* (the “compliance coordinator”), within 30 days from the date the complainant becomes aware of the alleged discriminatory action.

(c) The grievance must be in writing, contain the name and address of the complainant, provide a complete description of the problem or action alleged to be discriminatory, including

## TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

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any documents to support the claim, and state the remedy or relief sought by the complainant. The complainant should also state in the grievance whether he or she would like to present evidence at a hearing.

(d) If the complainant has requested a hearing, the compliance coordinator shall schedule a hearing within ten days from the date the grievance is submitted by the complainant. The compliance coordinator and two other Department of Public Health administrators shall preside at the hearing. The complainant may then present evidence through oral testimony, witnesses, and exhibits. The complainant shall have the right to be represented by a person of his or her choice at the hearing.

(e) The compliance coordinator, or his or her designee, shall conduct an investigation of the grievance to determine its validity. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. The compliance coordinator shall maintain the files and records of the Department of Public Health relating to such grievances.

(f) The compliance coordinator shall issue a written decision on the grievance no later than thirty days from the date the written grievance is submitted, or if a hearing is requested, thirty days from the date the hearing is held.

(g) The complainant may appeal the decision of the compliance coordinator by filing an appeal with the Deputy Attorney General for Administration, Office of the Attorney General, Administration Building, Second Floor, Capitol Hill, within 15 days of receiving the compliance coordinator's decision. The person hearing the appeal shall be impartial as demonstrated by the absence of prior involvement in substantive aspects of the filed grievance.

(h) The Deputy Attorney General for Administration shall issue a written decision in response to the appeal no later than thirty days from receipt of the appeal.

(i) The availability and use of this grievance procedure does not preclude a person from filing a complaint of discrimination on the basis of disability or any action prohibited by the regulations implementing § 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990 with the U.S. Department of Health and Human Services, Office for Civil Rights, 50 United Nations Plaza, Room 322, San Francisco, California, 94102; telephone number (415) 556-8586 - Voice and TDD; FAX (415) 556-5165.

(j) The compliance coordinator shall be responsible for ensuring that arrangements are made to enable disabled persons to participate in or make use of this grievance process on the same basis as non-disabled individuals. Such arrangements may include, but are not limited to, the provision of interpreters for the deaf, providing taped cassettes of material for the blind, and assuring a barrier-free location for the proceedings.

\* So in original.

Modified, 1 CMC § 3806(d), (e), (f).

## **TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION**

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History: Amdts Adopted 20 Com. Reg. 16305 (Dec. 15, 1998); Amdts Adopted 18 Com. Reg. 14468 (Nov. 15, 1996); Adopted 17 Com. Reg. 13554 (July 15, 1995).

Commission Comment: The 1996 and 1998 grievance procedure amendments amended subsection (b).