

Florida Commission for the



Transportation Disadvantaged

LOCAL GRIEVANCE GUIDELINES FOR TRANSPORTATION DISADVANTAGED SERVICES

Prepared by the

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I. INTRODUCTION

The Commission for the Transportation Disadvantaged oversees, through contractual arrangements, a coordinated system of local transportation disadvantaged service providers in the state. At the local level Community Transportation Coordinators are responsible for the provision of service. The service area for which the Community Transportation Coordinator is responsible is, at a minimum, an entire county, but can include more than one county. The Community Transportation Coordinator can be a transportation operator and actually provide transportation service, or it can form a network of providers by contracting all or some of the service to other transportation operators.

Another key entity involved in the development, monitoring, support, and evaluation of the local service delivery system is the local Coordinating Board. Each county or service area has a local Coordinating Board to provide information, guidance and advice on the local coordinated system.

The purpose of these guidelines is to provide information and uniform guidance in regard to local grievance practices and procedures. It is to be applied by Community Transportation Coordinators and local Coordinating Boards in developing and implementing their local grievance procedures.

It is the intent of the Commission for the Transportation Disadvantaged to encourage resolution of grievances at the local level, and to educate the passengers, funding agencies, and any other interested parties about the grievance process(es).

II. FORMAL GRIEVANCE VS. SERVICE COMPLAINTS

As you develop your Grievance process(es), it is very important that we define and delineate the differences between what a formal grievance is, pursuant to Chapter 427 F.S. and Rule 41-2 F.A.C., and what daily service complaints are. Daily service complaints are routine in nature, occur once or several times in the course of a days' service, and are usually resolved immediately within the control center of the Community Transportation Coordinator. However, if left or unresolved, a routine service complaint can mushroom into a formal grievance. Further discussion of the differences between a Formal Grievance and a Service Complaint follows:

A. SERVICE COMPLAINT

Service complaints are routine incidents that occur on a daily basis, are reported to the driver or dispatcher, or to other individuals involved with the daily operations, and are resolved within the course of a reasonable time period suitable to the complainant. Local service complaints are driven by the inability of the Community Transportation Coordinator or transportation operators, not local service standards established by the Community Transportation Coordinator and local Coordinating Board. If the Community Transportation Coordinator is also an operator, their statistics on service complaints should be

included. Local standards should be developed regarding the reporting and parameters of service complaints.

Example:

Service Complaints may include but are not limited to:

- Late trips (late pickup and or late dropoff)
- No-show by transportation operator
- No-show by client
- Client behavior
- Driver behavior
- Passenger discomfort
- Service denial (refused service to client without an explanation as to why, i.e. may not qualify, lack of TD funds, etc.)

B. FORMAL GRIEVANCE

A formal grievance is a written complaint to document any concerns or an unresolved service complaints regarding the operation or administration of TD services by the Transportation Operator, Community Transportation Coordinator, designated official planning agency (DOPA), or local Coordinating Board. The Grievant, in their formal complaint, should demonstrate or establish their concerns as clearly as possible.

Example:

Formal Grievances may include but are not limited to:

- Chronic or reoccurring or unresolved Service Complaints
(Refer to description of service complaints)
- Violations of specific laws governing the provision of TD services i.e. Chapter 427 F.S., Rule 41-2 FAC and accompanying documents, Sunshine Law, ADA.
- Contract disputes (Agencies/Operators)
- Coordination disputes
- Bidding disputes
- Agency compliance
- Conflicts of interest
- Supplanting of funds
- Billing and /or accounting procedures

Again, these guidelines are to be used to focus on the minimum requirements in drafting and finalizing the formal grievances. This is a guide to assist in setting local standards for determining the process(es) to resolve formal grievances.

III. HEARING AND DETERMINING A GRIEVANCE

There is a distinct difference between "hearing" a grievance, and "hearing and determining" a grievance. There is no bar to a person or entity listening to or "hearing" a grievance. An entity may even investigate them, from a purely fact-finding perspective, as long as it does not, in the course of its investigation, impose requirements on third parties that are not supported by statute or contractual agreement.

However, when an entity makes a determination of the rights, duties, privileges, benefits, or legal relationships of a specified person or persons, it is exercising "adjudicative" or "determinative" powers. Deciding a grievance between two independent parties may fall within these parameters, depending on the nature of the grievance.

It should be noted that Chapter 427, F.S. grants no adjudicative powers to anyone. However, Rule 41-2, F.A.C. does provide for grievance processes at the local level:

1. LOCAL COORDINATING BOARD GRIEVANCE PROCESS

Rule 41-2.012(5)(f), F.A.C., provides for the local Coordinating Board to appoint a grievance committee to serve as a mediator to process and investigate complaints from agencies, users, potential users of the system and the Community Transportation Coordinator in the designated service area, and make recommendations to the local Coordinating Board (LCB) for improvement of service. Whereas the committee makes recommendations to the local Coordinating Board, and the local Coordinating Board is also an advisory body, neither entity has the authority to "hear and determine" a grievance. They only have the authority to "hear" and advise. It should be noted that even though the local Coordinating Board does not have determinative powers, the recognition of problems by the various members of the local Coordinating Board is a very useful mechanism to resolve many issues. In addition, it should be noted that since the local Coordinating Board is involved in the development and approval of the Transportation Disadvantaged Service Plan, and the annual evaluation of the Community Transportation Coordinator, there is considerable avenue for the local Coordinating Board to influence changes where needed.

This authority to hear and advise is the grievance procedure that is currently in place by all local Coordinating Boards and is a part of the Commission for the Transportation Disadvantaged planning grant deliverables. This procedure should not imply "determinative" powers, nor should the Commission for the Transportation Disadvantaged be included in the process as a final arbiter. However, the Commission for the Transportation Disadvantaged could be the recipient of a recommendation by the local Coordinating Board in matters pertaining to "the system" or matters within the contractual control of the Commission for the Transportation Disadvantaged. Further the Commission for the Transportation Disadvantaged may choose to listen to a grievance, with the

understanding that the Commission for the Transportation Disadvantaged is limited in its authority to rule on the grievance.

2. COMMUNITY TRANSPORTATION COORDINATOR GRIEVANCE PROCESS

The Transportation Disadvantaged Service Plan must be developed consistently with the Coordinated Transportation Contracting Instructions, incorporated by reference in Rule 41-2.002(27), F.A.C. Pursuant to these instructions, the Operations Element must contain at a minimum, the step-by-step process that the Community Transportation Coordinator uses to address "Service Complaints" and "Formal Grievances". The "Formal Grievance" part of this is intended to be the step-by-step process which allows for "hearing and determination" activities within the Community Transportation Coordinator's organization.

Therefore, it will provide steps by which a formal written grievance can be "heard" and a "determinative" action can be taken. The Community Transportation Coordinator's grievance procedure should ultimately end at its Board of Directors, Board of County Commissioners, Owner or whoever else is legally responsible for the actions of the Community Transportation Coordinator.

Apart from these grievance processes, aggrieved parties with proper standing may also have recourse through the Chapter 120, F.S., administrative hearings process or the judicial court system.

IV. MINIMUM REQUIREMENTS FOR FORMAL GRIEVANCE PROCEDURES BY COMMUNITY TRANSPORTATION COODINATOR & LOCAL COORDINATING BOARD

The following paragraphs contain minimum requirements for the development of grievance procedures by the Community Transportation Coordinator and local Coordinating Board as authorized by the Commission for the Transportation Disadvantaged pursuant to Chapter 427, Florida Statutes and Rule 41-2, F.A.C.

Formal grievance processes by the LCB or Community Transportation Coordinator shall be open to addressing concerns by any person or agency including but not limited to: Purchasing agencies, Users, Potential users, Private-for-profit operators, Private-nonprofit operators, Community Transportation Coordinator's, designated official planning agencies, Elected officials, and drivers.

- A. The minimum guidelines for the local Coordinating Board's formal grievance procedures are:
 1. The local Coordinating Board's formal grievance procedures should state that all grievances filed must be written and contain the following:

- The Name and Address of the complainant;
- A statement of the grounds for the grievance and supplemented by supporting documentation, made in a clear and concise manner; and
- An explanation by the complainant of the improvements needed to address the complaint.

2. All local Coordinating Board's must make a written copy of their grievance procedures available known to anyone, upon request.
3. Local Coordinating Board's grievance procedures should make known to whom and where grievances are to be sent.
4. The local Coordinating Board's grievance procedures must specify a maximum amount of days (not to exceed 60) that the local Coordinating Board has to respond to Grievant.
5. The local Coordinating Board will render a response in writing providing explanation or recommendations regarding the grievance.
6. The local Coordinating Board grievance subcommittee must review all grievances and report accordingly to the full local Coordinating Board.
7. All documents pertaining to the grievance process will be made available, upon request, in a format accessible to persons with disabilities.
8. If the local Coordinating Board receives a grievance pertaining to the operation of services under the Community Transportation Coordinator, that grievance should be passed on to the Community Transportation Coordinator for their response to be included in the local Coordinating Board's response.

B. The minimum guidelines for the Community Transportation Coordinator's formal grievance procedures regarding service and administrative complaints are:

1. The Community Transportation Coordinator's grievance procedures should state that all grievances filed must be written and contain the following:
 - The name and address of the complainant;
 - A statement of the grounds for the grievance and supplemented by supporting documentation, made in a clear and concise manner;
 - An explanation of the relief desired by the complainant.
2. All Community Transportation Coordinators and transportation subcontractors (including coordination contractors) must make a

written copy of their grievance procedures and rider policies available to anyone, upon request.

3. All Community Transportation Coordinators and transportation subcontractors (including coordination contractors) must post the contact person and telephone number for access to information regarding reporting service complaints or filing a formal grievance in each of their vehicles in plain view of riders.
4. Grievance procedures must specify a minimum amount of days (not to exceed 15 working days) to respond to Grievant in writing noting the date of receipt and the date by which a decision will be made.
5. The Community Transportation Coordinator will render a decision in writing, giving the complainant an explanation of the facts that lead to the Community Transportation Coordinator's decision and provide a method or ways to bring about a resolution.
6. All documents pertaining to the grievance process will be made available, upon request, in a format accessible to persons with disabilities.
7. The Board of Directors, Owners, or whoever is legally responsible must receive a copy of the grievance and response.

The desire to integrate the Community Transportation Coordinator and local Coordinating Board formal grievance process(es) is a local option. Any desire to involve the Commission for the Transportation Disadvantaged can be accomplished only after the local process is completed. The last step in every local process must be to refer the grievant to the Commission for the Transportation Disadvantaged Grievance Procedures. These procedures were established to address grievances that are brought to the Commission. To file a grievance with the Commission, the customer may begin the process by contacting the Commission through the TD Helpline at (800) 983-2435 or via mail at: Florida Commission for the Transportation Disadvantaged; 605 Suwannee Street, MS-49; Tallahassee, FL 32399-0450 or by email at www.dot.state.fl.us/ctd Upon request, the Commission will provide the customer with an accessible copy of the Commission's Grievance Procedures.

However, Chapter 427, F.S. does not expressly confer the power or authority for the Commission for the Transportation Disadvantaged to "hear and determine" a grievance between two third parties. The Commission for the Transportation Disadvantaged can listen to grievances and it can investigate them from a fact-finding perspective. It cannot be the "judge" or "arbiter" of the grievance in the sense of determining that one party's version of the facts is right and the other is wrong, and order the wrong party to somehow compensate the right party. On the other hand, the grievance may bring to light a problem within "the system". Similarly, if the grievance showed that one of the parties

with whom the Commission for the Transportation Disadvantaged contracts was acting so aberrantly as to not be in compliance with its contract, the Commission for the Transportation Disadvantaged could exercise whatever contractual rights it has to correct the problem.

Accordingly, the Commission for the Transportation Disadvantaged ' may take part in the grievance process, if it wants to, for purposes of listening to the grieving parties and gathering the facts of the matter. It may not decide the grievance, where doing so would amount to an exercise of adjudicative powers.

Medicaid complaints, appeals, and grievances will be addressed through the Medicaid Grievance System. All procedures must include a referral to Medicaid Fair Hearing, which are conducted through the Department of Children and Families.