

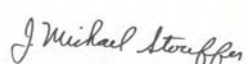


STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF CORRECTION

 DIVISION OF CORRECTION DIRECTIVE	PROGRAM:	ADMINISTRATIVE REMEDY PROCEDURES	
	DCD #:	185-002	
	TITLE:	Administrative Remedy Policy	
	ISSUED:	August 4, 2008	
	EFFECTIVE:	August 27, 2008	
	AUTHORITY:		Paul O'Flaherty Assistant Commissioner
	APPROVED:		J. Michael Stouffer Commissioner

I. References:

- A. Suits by Prisoners, 42 U.S.C. § 1997e(a)
- B. Correctional Services Article, §§ 10-201 through 10-210, Annotated Code of Maryland
- C. Courts and Judicial Proceedings Article, §§ 5-1001 through 5-1007, Annotated Code of Maryland
- D. COMAR 12.02.27 and COMAR 12.07.01.
- E. DCD 175-2 and 250-1

II. Applicable to: All Division of Correction inmates housed in Division of Correction institutions and facilities

III. Purpose: To establish policy for the operation and management of the Administrative Remedy Procedure (ARP).

IV. Definition: Administrative Remedy Procedure means the procedure established by the Commissioner of Correction for inmate complaint resolution.

V. Policy:

- A. The Division of Correction encourages staff and inmates to make a good faith effort to resolve all institutionally related inmate complaints at the lowest possible level. Inmates are encouraged, but not required, to seek resolution of complaints through the informal resolution process. Inmates may seek formal resolution through the Administrative Remedy Procedure.
- B. Formal resolution under the Administrative Remedy Procedure consists of two levels:
 - 1. Filing a request for administrative remedy with the Warden, and
 - 2. Appealing to the Commissioner, if not satisfied with the response.

- C. An inmate not satisfied with the outcome of the Administrative Remedy Procedure Process may seek further administrative review in accordance with regulations of the Inmate Grievance Office (IGO).
- D. The purposes of the Administrative Remedy Procedure are to solve inmate problems and to be responsive to inmate concerns. When the Division of Correction finds that a request for administrative remedy or an appeal is meritorious in whole or in part, the Administrative Remedy Procedure, to the extent possible, should provide the inmate with meaningful relief.
- E. It is the policy of the Division of Correction that requests for administrative remedy and appeals under the Administrative Remedy Procedure should be answered on the merits and substantive relief provided to the inmate where warranted. Nevertheless, inmates must adhere to the time periods and other requirements set forth in this Directive and should not expect that any late submission will be considered.

VI. Procedures:

- A. Inmates may seek relief through the Administrative Remedy Procedure for issues that include, but are not limited to:
 - 1. Division of Correction and institutional policies and procedures;
 - 2. Medical services;
 - 3. Access to courts;
 - 4. Religious liberties;
 - 5. Lost, damaged, stolen, destroyed, or improperly confiscated property;
 - 6. Use of force;
 - 7. Sentence computation and diminution of confinement;
 - 8. Institutional conditions affecting health, safety, and welfare; and
 - 9. Administration and operation of this procedure.
- B. Inmates may not seek relief through the Administrative Remedy Procedure on the following issues:
 - 1. Case management recommendations and decisions;
 - 2. Maryland Parole Commission procedures and decisions;

3. Disciplinary hearing procedures and decisions; and
 4. Decisions to withhold mail.
- C. Inmates may seek relief concerning case management recommendations and decisions both through informal resolution and under IGO regulations. Disciplinary hearing decisions may be appealed under a wholly separate procedure in accordance with COMAR 12.02.27, applicable DPSCS directives, and under IGO regulations. Under no circumstances should inmates use the Administrative Remedy Procedure to raise any issue concerning disciplinary hearing procedures and decisions. Decisions to withhold mail may be appealed pursuant to DCD 250-1.
- D. Every inmate in the Division of Correction, regardless of physical condition, security level, administrative status, language barrier or housing assignment is entitled to submit a request for administrative remedy on those issues that qualify, and to appeal to the Commissioner if not satisfied with the response. If asked, wardens and staff shall ensure that assistance in filing requests for administrative remedy and appeals under the Administrative Remedy Procedure is available to inmates who are disabled or who are not functionally literate in English. Wardens shall ensure that the proper forms for using the Administrative Remedy Procedure are readily available in all housing units.
- E. Inmates are responsible for using the Administrative Remedy Procedure in good faith and in an honest and straightforward manner. When filing a request for administrative remedy or an appeal, inmates should briefly and clearly state the facts giving rise to the complaint and the relief requested.
- F. The Division of Correction will not allow any retaliation to be taken against inmates who use the Administrative Remedy Procedure in good faith. Inmates may use the Administrative Remedy Procedure to pursue complaints of any retaliation against them. When a claim of retaliation is confirmed, the Warden shall take appropriate action in accordance with Department of Public Safety and Correctional Services standards of conduct.
- G. Inmates may not file request for administrative remedy or appeals on behalf of other inmates, staff, or other third persons (such as visitors). Inmates are also restricted from filing class action complaints under this Directive.
- H. All requests for administrative remedy and appeals to the Commissioner shall be submitted in the name under which the inmate is committed to the custody of the Commissioner of Correction and shall include the inmate's identification number. An inmate may also include a religious name or name authorized by court order.

- I. The transfer of an inmate does not terminate the administrative remedy process, although transfer of an inmate may be relevant to any relief. An inmate who is transferred after an incident but prior to filing a request for administrative remedy shall submit the request to the Warden of the inmate's current institution, within the appropriate time period.
- J. Except as provided in Section VI.K of this Directive, inmates may submit any number of requests for administrative remedy on issues that qualify under the Administrative Remedy Procedure.
- K. The Commissioner of Correction may limit the number of requests an inmate may file if the inmate has misused the Administrative Remedy Procedure by filing requests that are frivolous, unnecessarily duplicative, or which contain threatening, obscene or abusive language or material.
 - 1. The Warden shall make a written recommendation to the Commissioner regarding the number of requests to which the inmate should be limited and the duration of the limitation using the Administrative Remedy Procedure Limitation Request, Appendix 1 to this Directive. The recommendation must provide a compelling reason for the limitation. The Warden's responsibilities under this section may be delegated only to an Assistant Warden.
 - 2. The Commissioner shall review the recommendation to limit an inmate's use of the Administrative Remedy Procedure and respond in writing by approval or disapproval of the recommendation. The Commissioner's responsibilities under this section may only be delegated to an Assistant Commissioner.
 - 3. An inmate may appeal a decision by the Commissioner to limit the number of administrative remedy requests to the IGO. Any appeal must be received by the IGO within 30 days of the date the inmate receives the Commissioner's decision.
 - 4. The Warden may dismiss any requests for administrative remedy that exceed the limit approved by the Commissioner. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request if failure to do so could result in serious harm.
- L. Time Periods and Filing Procedures at the Institutional Level:
 - 1. An inmate may, at any time, attempt informal resolution of a complaint, using both correspondence and discussion with staff, as well as the Informal Inmate Complaint Form, Appendix 2 to this Directive.

2. Inmates are encouraged to use informal resolution, but attempting informal resolution does not suspend or stay the deadline for filing a formal request for administrative remedy or any other time period.
3. An inmate must date, sign, and submit Request for Administrative Remedy, Appendix 3 to this Directive, within the later of:
 - a. Thirty (30) calendar days of the date on which the incident occurred; or
 - b. Thirty (30) calendar days of the date the inmate first gained knowledge of the incident or injury giving rise to the complaint.
4. Wardens should recognize that certain complaints may be ongoing in nature and therefore not always subject to a strict application of this time period. For example, the heating system in an inmate's housing unit has been malfunctioning for over 60 days. However, the weather has been unseasonably warm and the inmate has not complained because he or she has not been cold. The weather suddenly changes and now the inmate is cold and consequently complains about the malfunctioning heating system.
5. Requests for administrative remedy concerning sentence computation and diminution of confinement are not subject to the 30-day time period. Although this type of request may be filed at any time, inmates are encouraged to submit a request concerning sentence computation and diminution of confinement as soon as the inmate becomes aware of the problem. Appeals to the Commissioner of Correction concerning sentence computation and diminution of confinement must be filed within the time period set forth in Section VI.M.1 of this Directive.
6. When extraordinary circumstances prevent an inmate from submitting a request for administrative remedy within the 30-day time period, the Warden may accept a late filing.
7. The inmate shall describe a single complaint or a reasonable number of closely related issues on the request form. "Closely related issues" are those that arise out of a single occurrence or condition. For example, an inmate seeking both medical attention and monetary damages due to a claim of excessive force is clearly raising two closely related issues.
8. The inmate shall clearly and briefly state the facts giving rise to the complaint so that the basis for investigation can be determined. The necessary facts include:

- a. The date and location of the occurrence;
 - b. The names(s) of staff involved;
 - c. The name(s) of any witnesses;
 - d. A brief statement of the facts; and,
 - e. A brief statement of the relief requested.
9. If the inmate includes more than one issue in a single request for administrative remedy and the issues are not closely related or does not provide sufficient information to determine the basis for investigation, the Warden may dismiss the request for procedural reasons.
- a. If the Warden dismisses a request because the complaint contains multiple unrelated issues or does not provide sufficient information to determine the basis for investigation, the inmate may resubmit a request containing a single issue, or a reasonable number of closely related issues, or may resubmit with additional information needed to determine the basis for investigation.
 - b. The inmate must resubmit the request within the original time period or within 15 days of the date of dismissal, whichever is later.
 - c. Regardless of any dismissal, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.
10. The inmate shall submit the request for administrative remedy to an officer in the control center of the inmate's housing unit, a tier officer, or a custody supervisor. The officer who receives a request for administrative remedy must sign and date the form and provide the inmate with the carbonless copy of the request. The officer who receives a request for administrative remedy must deliver the request to the location designated by the Warden by the end of that officer's shift.
11. Within five business days of the date the inmate submits a request for administrative remedy, the Warden shall provide the inmate with a receipt and case number. Inmates are responsible for keeping the carbonless copy of the request for administrative remedy and any receipts. These documents are needed in the event of further proceedings.

12. The Warden shall investigate and respond to all requests for administrative remedy within 30 calendar days of the date of submission of the request for administrative remedy.
 - a. The Warden is permitted one extension of 15 calendar days to respond to a request for administrative remedy. The inmate's consent to the extension is not required.
 - b. If the Warden extends the time to respond, the Warden must provide written notice of the extension using the Extension Form, Appendix 4 to this Directive. The completed form must be sent to the inmate within the original 30 days.
 13. An inmate may withdraw a request for administrative remedy at any time. An inmate who withdraws a request for administrative remedy shall submit the withdrawal using the Withdrawal Form, Appendix 5 to this Directive. Withdrawal of the request may prevent consideration of the claim at a higher level.
 14. By separate Directive, the Commissioner shall establish standards for the investigation of requests for administrative remedy and preparing responses, as well as the duties of wardens and institutional administrative remedy coordinators.
 15. Regardless of any dismissal for procedural reasons, staff shall investigate and take appropriate action on any issue in a request for administrative remedy if failure to do so could result in serious harm.
 16. The Warden shall promptly provide to the inmate any relief ordered in response to a request for administrative remedy or appeal.
 17. If the Warden fails to respond to a request for administrative remedy within 30 calendar days of the date the request is submitted or within 45 calendar days of the date the request is submitted, if an extension is required by the Warden under Section VI.L.12.a of this Directive, the request for administrative remedy is considered denied and the inmate may appeal to the Commissioner of Correction.
- M. Time Periods and Filing Procedures for Appeals:
1. All appeals to the Commissioner of Correction must be dated, signed and submitted, using the Headquarters Appeal of Administrative Remedy Response, Appendix 6 to this Directive, so that the appeal is received by the Commissioner's Office within 30 calendar days of the date the inmate receives the Warden's response, or within 30 calendar days of the date the response from the Warden was due.

Appeals concerning sentence computation and diminution of confinement are included within this time period.

2. Unless indigent as defined by DCD 175-2, inmates are encouraged to affix proper postage and use the United States Postal Service when submitting an appeal. Inmates may also use institutional courier mail systems to submit appeals. If an institutional courier system is used, the Division of Correction has no responsibility for delivery dates exceeding the applicable time period.
3. When extraordinary circumstances prevent an inmate from submitting an appeal so that it is received by the Commissioner's Office within the 30-day time period, the Commissioner may accept a late filing.
4. An inmate may appeal to the Commissioner even if the Warden finds the complaint meritorious in whole or in part, for example, if the inmate is dissatisfied with the relief ordered by the Warden.
5. When any appeal is received by the Commissioner, the headquarters administrative remedy coordinator shall, within five business days of the date the appeal was received, send the inmate Part C of the appeal notifying the inmate of the date the appeal was received.
6. The Commissioner shall investigate and respond to all appeals within 30 calendar days of the date the appeal is received, unless an extension is required under Section VI.M.9.b of this Directive.
7. The Commissioner's investigation of an appeal is not limited by any investigation conducted by the Warden. When responding to an appeal, the Commissioner is not limited to affirming or reversing the Warden's decision. The Commissioner may take any action in response to an appeal that is consistent with the major purposes of the Administrative Remedy Procedure.
8. A failure by the Warden to respond to a request for administrative remedy in a timely manner does not prevent the Commissioner from responding to an appeal on any basis that was available to the Warden.
9. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, the Commissioner may direct the Warden to investigate the complaint and prepare a recommended response to the appeal for the Commissioner to review.

- a. The Warden shall investigate and prepare a recommended response to the appeal on behalf of the Commissioner and provide the Commissioner with the recommended response within 15 calendar days of the date of the Commissioner's order, or earlier if required by the Commissioner.
 - b. If the Warden is directed to investigate and prepare a recommended response on behalf of the Commissioner, the Commissioner is permitted one extension of 15 calendar days to respond to the appeal. The inmate's consent to the extension is not required.
 - c. If the Commissioner extends the time to respond to an appeal, the Commissioner must provide written notice to the inmate using the Extension Form, Appendix 4 to this directive within the original 30 days.
 - d. The Commissioner may accept or reject the Warden's recommended response, substitute the Commissioner's response, or take any action consistent with the purposes of the Administrative Remedy Procedure, except remanding to the Warden for further proceedings at the institutional level.
10. If the inmate appeals to the Commissioner after the Warden has failed to respond in a timely manner, and the inmate subsequently receives a response from the Warden concerning the same request for administrative remedy, the Warden shall also provide the Commissioner with a copy of the untimely response.
- a. The inmate may withdraw the appeal using the Withdrawal Form, Appendix 5 to this Directive if the inmate is satisfied with the Warden's response, even though the response was not timely.
 - b. If the inmate is not satisfied with the Warden's response, the inmate may continue with the appeal.
 - c. If the inmate continues with the appeal, no further action is required by the inmate. The inmate may but is not required to supplement the appeal based on the Warden's response.
11. Any request for administrative remedy submitted directly to the Commissioner without first being submitted to the Warden shall be referred by the Commissioner to the Warden.

- a. The Commissioner shall refer a request for administrative remedy submitted directly to the Commissioner within 30 calendar days of the date the request is received by the Commissioner. The referral shall include the date the request was received.
 - b. The Commissioner shall provide written notice of the referral to the inmate within 30 calendar days of the date the request was received by the Commissioner. The inmate's consent to the referral is not required.
 - c. In the event of such a referral, the Warden shall provide the inmate with a receipt using Part C of the request within five business days of receiving the referral and shall respond to the inmate within 30 calendar days of the date the Warden receives the referral.
 - d. If an extension of 15 calendar days to respond to a referral is required, the Warden shall provide the inmate with written notice within 30 calendar days of the date the Warden received the referral using the Extension Form, Appendix 4 to this Directive. The inmate's consent to the extension is not required.
 - e. In all respects, the referral shall be treated as if it were an original request for administrative remedy, except that no referral by the Commissioner shall be dismissed by the Warden for lack of timeliness if the original request was received by the Commissioner within 30 calendar days of the date of the incident or within 30 calendar days of the date the inmate gained knowledge of the incident or injury giving rise to the complaint, whichever is later.
 - f. Regardless of any referral, headquarters staff shall investigate and take appropriate action on any issue in a request for administrative remedy submitted directly to the Commissioner if failure to do so could result in serious harm.
12. By separate Directive, the Commissioner shall establish standards for the investigation of appeals and preparing responses to appeals, and the duties of the headquarters administrative remedy coordinator.
 13. Regardless of any dismissal of an appeal for procedural or other reasons, headquarters staff shall investigate and take appropriate action on any issue in an appeal if failure to do so could result in serious harm.

14. If the Commissioner fails to respond to an appeal within 30 calendar days of the date the Commissioner receives the appeal, or 45 calendar days of the date received if an extension is required under Section VI.M.9.b of this Directive, the appeal is considered denied, and the inmate may seek further administrative review under regulations of the IGO.

N. Regulations of the Inmate Grievance Office (IGO) include the following:

1. COMAR 12.07.01.06B provides: “An appeal from the administrative remedy procedure to the Inmate Grievance Office shall be filed within 30 days from the grievant’s receipt of a response from the Commissioner [of Correction], or within 30 days of the date the Commissioner’s response was due.”
2. COMAR 12.07.01.06E provides: “The Inmate Grievance Office may dismiss any disciplinary proceeding appeal and any grievance within the scope of the administrative remedy procedure that has not been exhausted through all institutional remedies in a timely manner.”
3. COMAR 12.07.01.06F provides: “A time limitation or procedural bar may be waived [by the Inmate Grievance Office] for a grievance which represents a continuing problem or for which good cause is shown for a failure to proceed in a timely manner.”
4. COMAR 12.07.01.07A provides: “The Executive Director shall conduct a preliminary review of a grievance to determine whether it should be dismissed or proceed to a hearing.”
5. COMAR 12.07.01.07B(4) provides: “A grievance shall be dismissed on preliminary review as wholly lacking in merit if . . . [t]he grievant has failed to exhaust remedies available under the administrative remedy procedure or the disciplinary proceeding in a timely manner, and has not shown good cause for the failure to do so.”

O. In the Courts of the State of Maryland, judicial review of final decisions in matters before the IGO is available pursuant to Correctional Services Article, § 10-210.

1. The inmate may seek judicial review of a final decision in matters before the IGO in the Circuit Court of the County in which the inmate is confined. Correctional Services Article, § 10-210(b)(2).
2. Courts and Judicial Proceedings Article, § 5-1003(a)(1) provides: “A prisoner may not maintain a civil action until the prisoner has fully exhausted all administrative remedies for resolving the complaint or grievance.”

- P. Federal law, 42 U.S.C. § 1997e(a) provides: “No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”
- Q. This series of Directives establishes policy and procedure for the operation of the Administrative Remedy Procedure throughout the Division of Correction.
- R. The institutional administrative remedy coordinator or designee shall complete the Policy Management Audit Form, Appendix 7 to this Directive in June and December of each calendar year. When deficiencies are noted, a compliance plan shall be completed to address each deficiency. A copy of the completed form(s) shall be forwarded to the:
1. Institutional audit coordinator; and
 2. Director, Office of Policy Development, Analysis and Management

The institutional administrative remedy coordinator or designee shall maintain a copy of the form for review during the Headquarters Administrative Remedy Audit.

- S. No institutional directives are required or permitted.

VII. Attachments:

- A. Appendix 1, Administrative Remedy Procedure Limitation Request (DOC Form 185-002aR)
- B. Appendix 2, Informal Inmate Complaint Form (DOC Form 185-002bR)
- C. Appendix 3, Request for Administrative Remedy (DOC Form 185-002c)
- D. Appendix 4, Extension Form (DOC Form 185-002dR)
- E. Appendix 5, Withdrawal Form (DOC Form 185-002eR)
- F. Appendix 6, Headquarters Appeal of Administrative Remedy Response (DOC Form 185-002fR)
- G. Appendix 7, Policy Management Audit Form (DOC Form 1-2aR) and Policy Management Compliance Plan (DOC Form 1-2bR)

VIII. Rescissions:

- 185-001: Table of Contents, dated April 1, 1993
- 185-002: Administrative Remedy Procedure Policy, dated February 15, 2005
- 185-100: Administrative Remedy Procedure Description, dated April 1, 1993
- 185-101: Time Frames, dated April 1, 1993
- 185-200: Institution Program Orientation and Management, dated April 1, 1993
- 185-201: Inmate Orientation, dated April 1, 1993

- 185-202: Staff Awareness, dated April 1, 1993
- 185-203: Informal Resolution Procedure, dated April 1, 1993
- 185-204: Preliminary Review of a Request for Administrative Remedy, dated April 1, 1993
- 185-205: Administrative Dismissal of a Request, dated April 1, 1993
- 185-206: Acceptance and Investigation of a Request for Administrative Remedy, dated April 1, 1993
- 185-207: Warden's Response to a Request for Administrative Remedy, dated April 1, 1993
- 185-208: Providing Relief to a Request for Administrative Remedy, dated April 1, 1993
- 185-300: Headquarters Program Organization and Management, dated April 1, 1993
- 185-301: Administrative Dismissal of an Appeal, dated April 1, 1993
- 185-302: Acceptance and Investigation of a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
- 185-303: Commissioner's Response to a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
- 185-304: Providing Relief to the Inmate, dated April 1, 1993
- 185-305: Adverse Effect Request, dated April 1, 1993
- 185-400: Program Description of Procedures for Inmates, dated April 1, 1993
- 185-401: Submitting a Complaint for Informal Resolution, dated April 1, 1993
- 185-402: Submitting a Request for Administrative Remedy, dated April 1, 1993
- 185-403: Submitting a Headquarters Appeal of Administrative Remedy Response, dated April 1, 1993
- 185-500: Professional Training and Development, dated April 1, 1993
- 185-600: Documentation and Reporting, dated April 1, 1993
- 185-700: Audits, dated April 1, 1993

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