Oklahoma

Section-09 Programs	OP-090124	Page: 1	Effective Date: 10/11/05
Inmate/Offender Grievance Process	ACA Standards: 2-CO-3C-01, 2-CO-4B-03, 4-4016, 4-4284, 4-4301, 4-4344M, 4-ACRS-4C-01M, 4-ACRS-6B-03, 4-ACRS-7D-09		
Edward L. Evans, Interim Director Oklahoma Department of Corrections	Signature on File		

Addendum-01
Inmate/Offender Grievance Process

Changes are:

Item 4. was added to Section II. B. and reads as follows:

4. Private prison property issues

Language was modified in Section V. B. item 4. and reads as follows:

4. If the grievance is filed by an Oklahoma inmate held in another state or jurisdiction, the inmate will submit the grievance to the Corrections Compact Unit Supervisor, who will serve as the reviewing authority.

Language was added to Section VII.B. item 1. and reads as follows:

1. Inmates/Offenders will be charged $2 per grievance submitted to the administrative review authority or chief medical officer. Inmates/Offenders will not be refused access to the administrative review authority or chief medical officer because of their financial status. If there are not enough funds to cover this cost, the amount will be collected as soon as funds become available. The administrative review authority or chief medical officer has 20 working days from receipt of the grievance to respond and forward the original grievance to the inmate/offender.

   The inmate/offender will submit the original grievance and response from the reviewing authority, in addition to the original "Request to Staff" form used in the informal resolution process with response. No additional attachments are allowed.

Language was added to Section VII.C. item 2. and read as follows:

2. The reviewing authority will respond within 15 working days of receipt of the returned grievance with an amended response. The amended response will be provided on the "Grievance Response from Reviewing Authority" form (DOC 090124B, attached).

Action

The facility/unit head will be responsible for development of local procedure.

The division head will be responsible for compliance with this procedure.

The deputy director of Legal Services will be responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the director.

This procedure will be effective as indicated.

Addendum: Operations Memorandum No. OP-090124 entitled "Inmate/Offender Grievance Process" dated June 29, 2005

Distribution: Policy and Operations Manual
Department Website

Section-09 Programs	Page: 1	OP-090124	Effective Date: 06/29/05
Inmate/Offender Grievance	ACA Standards: 2-CO-3C-01, 2-CO-4B-03, 4-4016, 4-4284, 4-4301, 4-4344M, 4-ACRS-4C-01M, 4-ACRS-6B-03, 4-ACRS-7D-09		
Ron Ward, Director Oklahoma Department of Corrections	Signature on File		

Inmate/Offender Grievance Process

The grievance process is available to the inmate/offender to provide a standard method by which the inmate/offender may seek formal administrative decisions or answers to issues or complaints. (4-4284, 4-ACRS-6B-03) Inmates/offenders are required to exhaust the grievance process prior to filing a lawsuit (42 U.S.C. § 1997 (e) and 57 O.S. § 564). (2-CO-3C-01)

I. Definition of Terms Used in This Procedure

A. Inmate/Offender Grievance

The formal complaint by the inmate/offender using the "Inmate/Offender Grievance Report Form" (DOC 090124A, attached)

B. Request to Staff

A system of two-way communication between staff and inmates to resolve complaints / issues informally. (4-4016)

C. Inmate/Offender

Any person sentenced or assigned to any form of supervision, custody or control by the Oklahoma Department of Corrections either at any prison facility, in the community, probation or parole

D. Reviewing Authority

The facility head or facility correctional health services administrator where the incident occurred and to whom the grievance is first submitted.

E. Administrative Review Authority

The director, chief medical officer, or their designee to whom the formal grievance is submitted for final appeal

F. Department Staff

Any staff member employed by the Oklahoma Department of Corrections. Said designation may also include, for the purpose of this procedure only, employees of a contract provider or a volunteer for the Department.

II. Grievance Procedure Guidelines

A. Grievable Issues

1. A grievance may be used to address issues regarding conditions of confinement, actions of staff, and incidents occurring within or under the authority and control of the Department of Corrections that have personally affected the inmate/offender making the complaint and for which a remedy may be allowed by the department. (2-CO-4B-03, 4-4301)

2. The grievance process may be used no matter what the inmate's/offender's custody assessment or disciplinary status.

B. Non-grievable Issues

1. Misconduct reports received through the department disciplinary procedures may not be appealed through the grievance process. Misconduct reports may only be appealed through the appeal procedures referenced in OP-060125 entitled "Department Inmate Disciplinary Procedures."

2. Grievances may not be submitted about matters that are in the course of litigation.

3. Requests for disciplinary action against staff will not be addressed through the grievance process.

C. Failure to Submit Timely Grievance

An inmate/offender will submit a grievance within the time frames established below, if not, the grievance will be returned unanswered as untimely submitted, except as provided for in Section XII. of this procedure.

III. Access to the Grievance Procedure

The written grievance procedure and grievance forms will be readily available to inmates/offenders and staff throughout the department and the private prison facilities. (4-4344M)

A. Availability of Materials/Forms

Materials and forms will be available through the law libraries, general circulation libraries, facilities, district offices and staff. Assistance will be provided by staff as to the proper method of submitting a grievance.

B. Explanation of Process

The grievance process will be explained to inmates/offenders during the training or orientation process which will include non-English translation (oral and written), if the inmate/offender cannot understand English. Appropriate assistance for those impaired or disabled will also be provided. (4-4344M)

C. Training

Training will be provided and documented.

1. All department staff, employees of private prison or community contract facilities and volunteers will receive written and oral training in the grievance process during orientation and pre-service. Those employees who work at a facility or have regular daily contact with inmates during the course of their employment will also receive grievance process training during in-service.

2. All inmates/offenders will receive written and oral training of the grievance process during orientation upon initial reception at the assessment and reception center or the district/sub-office and a refresher course when received upon transfer at a facility or district/sub-office. (4-4344M)

D. Reprisals

An inmate/offender will not suffer reprisals for submitting a grievance in good faith.

1. Reprisal means any action or threat of action against anyone for using the grievance process. Actions taken in accordance with the abuse of process procedure below or discipline for false statements are not reprisal.

2. A grievance may be submitted if the inmate/offender feels any reprisal has occurred.

3. The inmate/offender will not receive a misconduct report for submitting a grievance in good faith.

4. A misconduct report may be issued if an inmate/offender has made a threat in a grievance against staff, a volunteer or visitor, or an inmate has

provided a falsified, forged or fraudulent document as evidence.

E. Direct Involvement

An employee directly involved in the inmate's/offender's complaint may not determine the final resolution of the formal complaint.

1. If the complaint concerns any direct, personal action by the reviewing authority or facility health services administrator, a designee from the facility will be appointed to resolve the complaint.

2. Direct involvement means direct personal involvement by the unit head in the alleged conduct/incident at issue in a formal complaint, but does not include routine administrative matters such as final review action taken by the unit head in the custody assessment process.

F. Inmate Assistance

An inmate/offender may assist another inmate/offender at the same facility in preparing their grievance, but the complaining inmate/offender must sign the grievance and submit it to staff.

G. Submitting on Behalf of Another Person

No person may submit a grievance on behalf of another person or about an issue/complaint not directly affecting the complaining inmate/offender.

H. Legible

Inmate/Offender "Request to Staff" (DOC 090124D, attached) forms and grievances submitted to staff for resolution must be legibly written in blue or black ink. No pencil or other color of ink is allowed.

IV. Informal Resolution

Informal resolution requires communicating with staff including submitting a "Request to Staff" if complaint is not resolved. The informal resolution process precedes submitting a grievance.

A. Initial Attempt

Before submitting a "Request to Staff" the inmate/offender must try to resolve the complaint by talking with the case manager, probation or parole officer, supervising employee or other appropriate staff within 3 days of the incident.

B. Request to Staff

1. If not resolved, the inmate/offender must submit a "Request to Staff" to the appropriate staff, generally unit staff, stating completely but briefly the problem. This statement must be specific as to the complaint, dates,

places, personnel involved and how the inmate/offender was affected.

2. The "Request to Staff" must be submitted within 7 calendar days of the incident, and only one issue or incident allowed per form.

3. Staff will attempt to resolve the issue and will respond in writing to all "Request to Staff" forms being used to attempt informal resolution, within 10 working days of receipt. On the "Request to Staff" form, staff will document any action taken and will cite or quote applicable department procedures. Staff will return the original form to the inmate/offender and will retain a file copy. Local units will develop and implement procedures for maintaining these files.

4. A "Request to Staff" may not be submitted about matters that are in the course of litigation.

5. A "Request to Staff" by an inmate regarding a pending misconduct of that inmate may only be submitted to the assigned investigator.

6. If there has been no response in 30 calendar days of submission, the inmate may file a grievance to the reviewing authority with evidence of submitting the "Request to Staff" to the proper staff member.

7. An Oklahoma Inmate held in another state or jurisdiction pursuant to an agreement between the Oklahoma Department of Corrections and said jurisdiction shall submit a copy of any request to staff to the Corrections Compact Unit at the Lexington Assessment and Reception Unit.

V. Submission and Review of Formal Grievances

A. Submitting the Grievance

If a complaint is not resolved informally, the inmate/offender may obtain and complete the "Inmate/Offender Grievance Report Form" and submit the original grievance form, along with the original "Request to Staff" form used in the informal resolution process, to the reviewing authority.

1. The inmate/offender grievance must be submitted by the complaining inmate/offender within 15 calendar days of the incident or the date of the response to the "Request to Staff" form, whichever is later. The "Request to Staff" must have been timely submitted (see Section IV. B. item 2. of this procedure).

2. The reviewing authority may choose to extend the submitting period up to 60 days for good cause.

3. Under no circumstances will the grievance be accepted after 60 days of the incident or the date of the response to the "Request to Staff" unless ordered by a court, the director, chief medical officer, or their designee.

4. Only one issue or incident is allowed per grievance.

5. All medical grievances will be submitted to the facility correctional health services administrator for resolution.

6. Contract private prison facilities are responsible for responding to grievances on matters occurring during the inmate's incarceration. Inmates may file grievances at private prisons with the facility administrator in regard to their stay at the private prison.

7. If the inmate/offender does not follow instructions as explained in this procedure and on the grievance forms, the grievance may be returned unanswered for proper completion. If allowed, the inmate/offender must properly re-submit the grievance within 10 calendar days of receipt. Continued failure to follow instructions may result in restrictions being imposed (refer to Section IX. of this procedure).

B. Where the Grievance is Submitted

1. Inmates/Offenders must submit the grievance to the reviewing authority or facility health services administrator, whichever is appropriate, where the alleged incident occurred. Grievances concerning custody assessment, sentence administration or records must be submitted to the facility where the field file is located. (ACRS-4C-01M)

2. If the location of the alleged incident is unknown or uncertain, the inmate/offender will consult with their case manager for assistance.

3. If the grievance involves multiple facilities at different locations, such as transfer of property, the inmate/offender will submit the grievance to one of the involved reviewing authorities who will investigate, respond to the grievance, and will forward the original grievance to the next reviewing authority for further investigation and response. The inmate/offender will be informed of where the grievance is being forwarded. This process will continue until every involved reviewing authority has reviewed and responded to the grievance. The last reviewing authority will return the originally submitted paperwork to the inmate/offender along with the response.

4. If the grievance is filed by an Oklahoma inmate held in another state or jurisdiction, the inmate will submit the grievance to the reviewing authority at the Lexington Assessment and Reception Center.

C. Time Frames for the Review of Grievances

1. The reviewing authority will respond on the "Grievance Response from Reviewing Authority" (DOC 090124B, attached), and will forward the original answered grievance forms to the inmate/offender within 15 working days of receipt of the grievance.

2. If the grievance involves multiple units at different locations, the period for response will be 15 working days from receipt of the grievance by each involved unit.

3. If the grievance cannot be answered within the 15-day period, the inmate/offender will be notified in writing, and the due date will be extended no more than an additional 15 working days.

4. If there has been no response by the reviewing authority within 30 calendar days of submission, the inmate/offender may send a grievance, asserting only that his grievance was not answered, to the administrative review authority or chief medical officer with evidence of submitting the grievance to the proper reviewing authority.

VI. Procedures of the Reviewing Authority

A. Tracking Procedures

1. Upon receipt of every grievance, the reviewing authority will assign a grievance number, category code, and stamp or show date of receipt on each and every page received, including the envelope. This includes grievances returned unanswered for any reason.

2. The reviewing authority will screen the grievance to determine:

a. whether the grievance concerns an issue or incident involving the unit where the grievance was received.

b. whether the issue raised is a grievable issue.

c. whether the grievance was submitted in a timely manner.

d. whether the instructions for submitting a grievance were followed.

3. If alleged to be of a sensitive/emergency nature, screen the grievance to determine if it should be handled as a sensitive/emergency grievance (refer to Section VIII.).

B. Answering the Grievance

1. On the "Grievance Response from Reviewing Authority" form the reviewing authority will cite and quote the appropriate department procedures, unit procedures or Oklahoma Statute and will state specific findings of fact, conclusions, and all actions taken by the reviewing authority to investigate and resolve the complaint.

2. The facility head will conduct a final review of the correctional health services administrator's medical grievance response. If they concur with the correctional health services administrators response, they will affix their signature and date on the "Grievance Response from Reviewing

Authority" form. If they do not concur with the correctional health services administrator's response, they will return it to them. The facility head will work with the correctional health services administrator to ensure that the revised response is appropriate.

3. The reviewing authority will have the inmate/offender sign and date the response acknowledging receipt.

4. The original copy of the grievance, the response and all paperwork submitted will be returned to the inmate/offender with one legible copy of all paperwork retained by the reviewing authority.

5. The reviewing authority will either grant or deny the grievance in whole or in part, and if granted will fashion the appropriate remedy and due date.

C. Resolution/Action in Response to a Grievance

1. Resolution/action may be taken at any reviewing level and may include [rk1] any appropriate remedy as authorized by Oklahoma law.

2. Grievances rendered moot by the inmate/offender discharging will not require a response.

VII. Appeal Process and Procedure (4-4284, 4-4301)

A. Grounds for Appeal

The inmate/offender may appeal the reviewing authority's response to the grievance on the following grounds only:

1. Newly discovered/available evidence not considered by the reviewing authority, relevant to the issue, necessary for a proper decision, and why the evidence was not previously available which if considered may alter the decision. The inmate/offender must clearly state the newly discovered/available evidence.

2. Probable error committed by the reviewing authority in the decision such as would be grounds for reversal. The inmate/offender must clearly state the error committed by the reviewing authority, including the specific section of procedures or statutes not followed by the reviewing authority.

B. Final Appeal to Administrative Review Authority or Chief Medical Officer

The inmate/offender may make a final appeal to the administrative review authority or chief medical officer, whichever is appropriate, within 15 calendar days of receipt of the reviewing authority's response or any amended response.

1. Inmates/Offenders will be charged $ 2 per grievance submitted to the administrative review authority or chief medical officer. Inmates/Offenders will not be refused access to the administrative review authority or chief

medical officer because of their financial status. If there are not enough funds to cover this cost, the amount will be collected as soon as funds become available. The administrative review authority or chief medical officer has 20 working days from receipt of the grievance to respond and forward the original grievance to the inmate/offender.

2. After answering the grievance, the administrative review authority or chief medical officer will submit a copy of the grievance form to the facility trust fund officer at the facility where the inmate is currently housed, for the $ 2 fee to be entered into the system as a "Legal Co-Pay."

3. If more time is required, the inmate/offender will receive written notification, and the due date will be extended no more than an additional 20 working days.

4. The administrative review authority or chief medical officer will retain one legible copy of all grievance paperwork on file, send one legible copy of the response to the reviewing authority, and forward the original paperwork to the inmate/offender.

5. Additional issues submitted in the grievance appeal and not presented in the initial grievance to the reviewing authority for response will not be addressed.

C. Administrative Review Action

If the administrative review authority or chief medical officer determines that the grievance needs further investigation or review by a reviewing authority, the grievance may be returned to the reviewing authority for further investigation and for an amended response to the inmate/offender.

1. If the grievance is returned to the reviewing authority, the inmate/offender will be notified by the administrative review authority or chief medical officer as to where the grievance has been sent.

2. The reviewing authority will respond within 15 working days of receipt of the returned grievance.

3. The reviewing authority will forward a copy of the amended response to the administrative review authority or chief medical officer.

4. If the inmate/offender has grounds for appealing the reviewing authority's amended response as stipulated in Section VII. item A. Grounds for Appeal, they may do so within guidelines and time frames specified.

D. Final Ruling

1. The ruling of the administrative review authority or chief medical officer is final and will conclude the internal administrative remedy available to the inmate/offender within the jurisdiction of the Oklahoma Department of Corrections. The inmate/offender will only have satisfied the exhaustion of

internal administrative remedies required by 57 O.S. § 564.

2. The department grievance procedure, however, does not satisfy the additional requirements for exhaustion of administrative remedies required by the Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 et seq. Inmates/offenders must also file a tort claim prior to filing a lawsuit.

VIII. Sensitive/Emergency Grievances

A. Process

Grievances may be submitted directly to the reviewing authority without informal resolution when the complaint is of a sensitive nature or when substantial risk of personal injury or other irreparable harm exists. The inmate/offender must use the "Inmate/Offender Grievance Report Form," and the word "emergency" will be written at the top of the grievance before submission.

1. Inmates/offenders will be charged $2 per grievance submitted to the administrative review authority or chief medical officer. Inmates/offenders will not be refused access to the administrative review authority or chief medical officer because of their financial status. If there are not enough funds to cover this cost, the amount will be collected as soon as funds become available.

2. After answering the grievance, the administrative review authority and the chief medical officer will submit a copy of the grievance form to the facility trust fund officer at the facility where the inmate is currently housed, for the $ 2 fee to be entered into the system as a "Legal Co-Pay."

3. A complaint of an emergency nature is one in which the complaint alleges irreparable harm or personal injury will occur and which the grievance process will be unable to address in a timely preventive manner. A complaint of a sensitive nature is one in which the complaint alleges misconduct by a staff member who either directly supervises the inmate/offender or is the reviewing authority where the inmate/offender is assigned

4. The inmate/offender will describe the reason why they believe the grievance to be of a sensitive/emergency nature that justifies not submitting the grievance through normal procedures and attempting informal resolution. The grievance must include a statement specifying the personal injury or irreparable harm at risk.

5. The inmate/offender will forward the grievance directly to the reviewing authority who can provide immediate resolution. If the complaint involves the reviewing authority and is of a sensitive nature, the grievance may be brought directly to the administrative review authority or chief medical officer, whichever is appropriate.

B. Upon receipt of a grievance so marked, the reviewing authority will have 24 hours

to determine if it is in fact an emergency grievance. If so, an expedited review will be conducted and a response provided to the inmate/offender within 48 hours of receipt, excluding weekends and holidays. The inmate/offender may appeal that response as provided for in Section VII. The administrative review authority will provide an expedited response to all verified emergency grievances within 72 hours of receipt of the grievance appeal, excluding weekends and holidays.

C. Determination that Grievance is Not Sensitive/Emergency

When the appropriate reviewing authority determines that a grievance is not of a sensitive/emergency nature, the grievance will be returned to the inmate/offender with notification that the grievance is not of a sensitive/emergency nature and that the standard grievance process must be followed.

IX. Abuse of the Process

A. Determining Abuse of the Grievance Process

1. The appropriate reviewing authority or chief medical officer may determine there is abuse or misuse of the grievance process, and may restrict the inmate's/offender's capacity to submit a grievance. The abuse may be, but is not limited to:

   a. grievances intended to harass another;

   b. the continual and repeated submitting of frivolous grievances (frivolous grievances are those with no basis in fact or law);

   c. the repeated submitting of grievances or "Requests to Staff" about an issue previously addressed by staff in their written response;

   d. grievances about de minimis (small, trifling, no available remedy) issues;

   e. repetitive grievances by multiple inmates/offenders about the same issue;

   f. an inmate/offender using letters and failing to bring complaints by formal grievance; and

   g. continued procedural defects, such as submitting additional pages, after having been previously warned.

2. If abuse of the process is determined, the inmate/offender will be notified in writing with a copy to the inmate's/offender's field file and a copy to either the reviewing authority or administrative review authority, whichever is appropriate. This will also result in the immediate return of the grievance without a finding or response. If this action is taken at the first level of review, the action is appealable to the appropriate administrative review authority.

B. Restriction Process

1. The restriction may be imposed for a period not longer than 12 months. Further abuses are grounds for extending the restriction.

2. In all grievances submitted during the restriction period, the inmate/offender is required to show cause why they should be permitted to grieve.

a. The inmate/offender will submit a duly verified affidavit, made under penalty of discipline for lying to staff, attached to the grievance stating that all contents of the grievance are true and correct to the best of the inmate's/offender's knowledge and belief. The affidavit will also contain a list by grievance number, date, description, and disposition at each level, of all grievances previously submitted by the inmate/offender within the last 12 months.

b. In each case, before considering the merits of the grievance, the reviewing authority will determine whether the inmate/offender has complied with the requirements for being permitted to submit a grievance.

c. If not, the grievance will be returned for correction and written reasons for such action provided to the inmate/offender.

d. The grievance may proceed when the inmate/offender meets the guidelines outlined in this section.

X. Confidentiality and Use

A. File Maintenance and Access

1. All inmate/offender grievance records will be treated as restricted and will be maintained in a file separate from the inmate/offender field file and medical record. Access will be limited to corrections employees who need such information in the performance of their duties, such as staff members preparing responses to grievances and investigations. (4-ACRS-7D-09)

B. Attachments to Special Reports

Copies of completed inmate/offender grievances will be made an attachment to all special reports ordered by any court. If no grievance was submitted by an inmate/offender plaintiff, an affidavit attesting to that fact will be made an attachment to the special report.

XI. Monitoring of Inmate/Offender Grievances

A. Grievance Report Log

1. The reviewing authorities and the facility health services administrators will record all submitted inmate/offender grievances and the actions taken at each level using the "Grievance Report Log" (DOC 090124C, attached).

2. "Grievance Report Logs" will be submitted to the office technology unit for analysis by the tenth of each month.

B. Records Keeping

A copy of the grievances submitted and dispositions of those grievances will be maintained for 3 years at each level the grievance was submitted. At the end of the 3-year period, the material may be disposed of in accordance with OP-020202 entitled "Management of Office Records."

XII. Submitting a Grievance Out of Time

A. If a grievance has been denied by the reviewing authority and the administrative reviewing authority due to the grievance not being submitted in a timely manner, the inmate may make a request to submit a grievance out of time.

B. The request may be submitted to the director only and must be received within 30 calendar days of the date of denial of the untimely grievance by the administrative reviewing authority.

C. The inmate must prove by substantial evidence that he did not submit the grievance in a timely manner through absolutely no fault of his own.

D. If the request to submit an untimely grievance is granted the inmate will be directed to re-submit the grievance with the reviewing authority within 15 calendar days of the director's decision. If denied relief by the reviewing authority, the inmate must appeal the decision to the administrative reviewing authority within 15 calendar days.

XIII. References

42 U.S.C. § 1997 (e)

51 O.S. § 151 et seq.

57 O.S. § 564, §566 et seq.

Booth v. Churner, 532U.S. 731, 121S.Ct. 1819(2001)

Jernigan v. Stuchell, 304 F3d 1030 (2002)

Porter v. Nussle, 534 U.S. 516, 122 SCT 983 (2002)

OP-020202 entitled "Management of Office Records"

OP-060125 entitled "Department Inmate Disciplinary Procedures"

XIV. Action

The facility/unit head will be responsible for development of local procedure.

The division head will be responsible for compliance with this procedure.

The deputy director of Legal Services will be responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the director.

This procedure will be effective as indicated.

Replaced: Operations Memorandum No. OP-090124 entitled "Inmate/Offender Grievance Process" dated March 23, 2004

Distribution: Policy and Operations Manual
Department Website

Referenced Forms	Title	Located In
DOC 090124A	"Inmate/Offender Grievance Report Form"	Attached
DOC 090124B	"Grievance Response from Reviewing Authority"	Attached
DOC 090124C	"Grievance Report Log"	Attached
DOC 090124D	"Request to Staff"	Attached