

ALTERNATIVE DISPUTE RESOLUTION OF EEO COMPLAINTS CENTERS FOR MEDICARE & MEDICAID SERVICES

The Centers for Medicare & Medicaid Services (CMS), Office of Equal Opportunity and Civil Rights and the American Federation of Government Employees (AFGE) Local 1923 present the following Alternative Dispute Resolution (ADR) program. The ADR program will serve as an alternative to the informal Counseling process currently provided by the Equal Employment Opportunity Commission's (EEOC's) regulations codified in 29 Code of Federal Regulations (CFR) Part 1614 (hereinafter Part 1614). Additionally, it will complement the formal complaint process. This ADR program will supersede all other existing EEO related ADR programs in CMS.

I. INTRODUCTION

The CMS Office of Equal Opportunity and Civil Rights (OEOCR) in partnership with AFGE Local 1923 is inaugurating a Alternative Dispute Resolution (ADR) program for mediating EEO complaints. The ADR program is being conducted pursuant to EEOC regulations, specifically, Part 1614, sections 102 and 105. The ADR program offers mediation as an alternative to informal EEO counseling for aggrieved persons who believe they have been discriminated against based on race, color, sex (including sexual harassment and sexual orientation), age, religion, national origin, disability (mental and/or physical), and reprisal. Coverage will include all current employees and applicants for employment.

The ADR process is designed to settle disputes without litigation or administrative adjudication. Furthermore, ADR is intended to address individual disputes within a reasonable period at the informal stage of the EEO complaint process by using trained mediators to facilitate resolution. Once chosen, the initial thirty (30) day pre-complaint ADR period can be extended from 30 to 90 calendar days upon agreement of the parties.

The mediator is a neutral participant who involves both parties to find solutions to conflict. The parties must actively participate in good faith in the ADR process to achieve the ultimate goal RESOLUTION. Mediation can be requested by the aggrieved person, recommended by a management official, EEO counselor or the Director, OEOCR.

Participation in ADR by the aggrieved individual is strictly voluntary. However, when the aggrieved person elects to participate in the ADR program, appropriate management officials are required to participate in this program as well. As explained below, the aggrieved person and CMS management are entitled to be represented throughout the ADR process.

The rights of employees and management under mediation are the same as in the informal EEO process. That is, when disputes are not resolved through ADR, the aggrieved person has the right to pursue the complaint through the regular EEO process by filing a formal complaint.

II. DIFFERENCES BETWEEN INFORMAL COUNSELING AND MEDIATION

Equal Employment Opportunity counseling, or pre-complaint processing is conducted pursuant to 29 C.F.R. Part 1614.105, which provides that aggrieved persons who believe they have been discriminated against on the bases of race, color, religion, sex, national origin, age, or disability, or in retaliation for having participated in activity protected under various civil rights statutes, must consult an EEO counselor prior to filing a complaint, in order to try to informally resolve the matter. Counseling is a required first step in the EEO complaint process.

Informal counseling consists of the following activities:

1. Advising the aggrieved person about the EEO complaint process under 29 C.F.R Part 1614 and processing election requirements such as ADR;
2. Determining the issue(s) and basis(es) of the potential complaint;
3. Conducting a limited inquiry for the purpose of furnishing information for settlement efforts and determining jurisdictional questions if a formal complaint is filed;
4. Seeking resolution of the matter at the lowest possible level;
5. Documenting the resolution or advising the aggrieved person of his/her right to file a formal discrimination complaint if resolution fails; and
6. Preparing a report sufficient to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution (ADR) refers to processes that provide an alternative to formally established processes, usually litigation, for resolving disputes. In the context of EEO complaint processes, ADR processes generally provide an alternative to the traditional informal EEO counseling and/or formal complaint processes. ADR processes usually involve a third-party neutral such as a mediator or facilitator working with the parties in dispute to facilitate their communication and assist them in working toward a resolution of their dispute. ADR includes many processes and range from a low level of involvement to a high level of involvement by the third-party neutral. ADR processes include conciliation, facilitation, mediation, fact-finding, early neutral evaluation, and arbitration. Generally, the third-party neutral is a process expert, skilled in a particular ADR process.

This CMS ADR program involves the use of mediation during both the informal and formal stages of the EEO complaint process.

The objective is to attempt to informally resolve allegations of employment discrimination pursued

through CMS's EEO complaint process at the earliest possible time while not infringing upon the rights guaranteed under 29 CFR Part 1614.

The mediation process is an ADR process used in many Federal agencies, including EEOC. It is an informal process in which a neutral third party assists the involved parties to reach a voluntary, negotiated resolution of the dispute. Mediation provides the parties the opportunity to discuss the issues raised in dispute, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement, and ultimately, incorporate those areas of agreement into resolutions.

Advantages of Mediation :

- is confidential; the sessions are not taped or transcribed. No records are kept regarding the discussions and meetings;
- is fair, it involves neutral third parties who have no interest in the outcome;
- is informal (does not require extensive documentation or witnesses);
- is non-adversarial;
- fosters win-win solutions;
- helps maintain or improve working relationships (opens lines of communication and reduces tensions);
- avoids lengthy and unnecessary litigation; and
- empowers employees and managers to control their fate by involving them in developing solutions.

How Informal EEO Counseling Differs from Mediation

During the informal counseling period, an EEO counselor works with the aggrieved person and management to gather information on the matter and attempt to resolve the dispute. If the matter is not resolved during this period, the EEO counselor writes a counseling report that documents the matter and any attempts at settlement. The counseling report must detail the issue(s), basis (or bases) of discrimination claimed, and any other jurisdictional questions. The counseling report is subsequently used in the processing of the formal complaint to determine the scope of the complaint. Counselors are trained to gather information (interview witnesses and gather records and documents) about the matter in order to effectively write the counseling report. The EEO Counselor generally focuses on gathering information from each individual separately. Informal resolution efforts by the counselor are usually pursued by shuttling information and resolution proposals between the parties rather than directly holding joint discussions.

Mediators are neutral third parties whose focus is to facilitate communication and problem solving by the individual disputants. They work to identify common ground between the parties and help them develop options for resolving their dispute. As such, the mediator's activities correspond to achieving this goal. Generally, the mediator is someone from outside the disputants' organization who does not know the parties and has no interest in the matter. The mediator meets with the disputing parties and their representatives (if any) jointly to discuss the issues and ways of possibly resolving the dispute. The mediator may meet separately with the parties to further discuss the issues and explore possible settlement options privately. The mediator may carry settlement offers

between the parties. Mediators do not evaluate the merits of the matters in dispute or the fate of the potential case if the matter is not resolved through mediation and it is pursued through the formal complaint process and litigation in the courts. However, the mediator may introduce reality checks by sharing his/her experience in mediating similar disputes and/or with similar litigation. In mediation, the mediator may make suggestions or recommendations based on his/her expertise, but the parties control the process and the outcome. The parties decide whether or not to continue with mediation, whether or not to resolve the matter through a settlement agreement, and fashion the terms of their agreement. Mediation is a confidential process. The mediator does not keep records or write reports or otherwise disclose anything about the mediation proceedings.

If the mediation does not result in a resolution of the matter *during the informal stage*, in this CMS EEO ADR program, the matter is referred back to the EEO counselor for the conclusion of the informal counseling period and the development of the counseling report.

III. ADR COVERAGE

The ADR program covers EEO complaints initiated by all current employees and applicants for employment. This includes bargaining and nonbargaining employees who present issues that are actionable under the covered statutes and EEOC's regulations. Also, the Program covers persons who are currently involved in the pre-complaint counseling stage. However, for the latter instances, the pre-complaint process cannot exceed the 90 day period provided in Part 1614 for informal counseling. Mediation, however, will not be entertained in complaints involving termination, separation, any disciplinary or adverse action as outlined in Article 23, Sections 3 and 4 of the Master Labor Agreement (MLA), or any matter on which a grievance has already been filed.

IV. CONFIDENTIALITY

The mediation sessions and all materials disclosed during the mediation are confidential. All notes taken by participants (mediator, management representative, disputants and disputants' representative) will be destroyed. The participants must agree to confidentiality. External people (i.e., members of the Human Resources Management Group and/or the Office of Financial Management) involved in the process must agree to confidentiality. The parties to mediation, including the Mediator, will not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the Mediation Agreement or the Mediation Report.

Also, during the mediation sessions, the Mediator will not disclose anything that either of the parties asks to be held in confidence.

V. PROCEDURES

A. INFORMAL PROCESS

The procedures for electing either mediation through ADR or the informal EEO counseling process are outlined below.

1. Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex (including sexual harassment and sexual orientation), national origin, age, disability (mental and/or physical) and/or reprisal must contact an EEO Counselor within 45 calendar days of the date of the matter alleged to be discriminatory or in the case of personnel action, within 45 days of the effective date of the action. The aggrieved person has the right to representation of his or her choice, throughout the complaint process including the informal stage. If the aggrieved person contacts OEOCR for Counselor assignment, the aggrieved person will be provided a copy of CMS's EEO Counselor list for him/her to select a Counselor.
2. When contacted, the EEO Counselor will inform the aggrieved person of the ADR option provided by the ADR program and provide him/her with a copy of the ADR program. If necessary, the aggrieved person should contact either the EEO Complaints Team Leader or the ADR Coordinator for further explanations concerning the ADR Program.
3. The EEO Counselor will also advise the aggrieved person of his or her rights and responsibilities in the EEO complaint process, as set forth in 1614.105(b).
4. The initial contact with the EEO Counselor will start the time limits provided in EEOC's regulations for informal counseling and the subject ADR mediation program.
5. The Aggrieved person must elect either the informal (EEO) counseling or the ADR mediation process after the initial contact with the EEO Counselor.
6. If the Aggrieved person chooses the ADR mediation process, s(he) must immediately fill out the ADR Request Form (Appendix A). (The ADR request form indicates that the aggrieved person's signature on the ADR request form means that the ADR process has been chosen in lieu of informal counseling).
7. The EEO Counselor will immediately provide OEOCR with the signed ADR request form.
8. The ADR Coordinator will contact the Sharing Neutrals Program Manager, DHHS, for an assignment of a mediator within 3-5 working days of the notification that ADR has been elected by the aggrieved person. Once the mediator has been selected, the ADR Coordinator, will ensure that ADR is completed within the prescribed time frame.
9. The Director/Deputy Director, OEOCR will identify the appropriate management official(s) to participate in the mediation.
10. The ADR Coordinator will coordinate the mediation effort, having primary responsibility

for logistical arrangements.

11. The mediation process will commence by the ADR Coordinator or the Mediator contacting the aggrieved person (and representative, if any) and the appropriate management official to schedule the mediation session. When the parties to the dispute convene, they will sign an Agreement to Mediate (Appendix B).
12. For Regional cases, mediators will be obtained from local Federal Executive Board Sharing Neutrals Programs or other means as appropriate .
13. If ADR mediation is successful, the parties will complete and sign a Mediation Agreement which will describe the resolution to the complaint (Appendix C). Other than allegations concerning a breach of the Agreement, the aggrieved person is precluded from filing a complaint on the issues settled by the Agreement. For cases involving retroactive personnel actions and/or backpay, concurrence from the HR Director is required.
14. If ADR mediation is unsuccessful, the Mediator will report the outcome to the ADR Coordinator and will indicate on the ADR Mediators Reporting Form that no resolution was reached (Appendix D). OEOCR will then contact the Counselor of record and ask him/her to issue the Notice of Right to File a Discrimination Complaint and the EEO Counselor's Report. However, if the Counselor of record is unavailable, the Counseling Coordinator can prepare these documents.
15. The EEO Counselor will provide the aggrieved person with a copy of the Counselor's report, and the Notice of Right to File a Discrimination Complaint and the Complaint Form. The EEO Counselor will advise the aggrieved person that if (s)he elects to file a complaint of discrimination it must be filed within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint.

B. FORMAL PROCESS

Pursuant to 29 C.F.R. 1614.108(f), the Agency shall provide the Complainant a completed Report of Investigation (ROI) in conjunction with the Notice of Rights to elect a hearing before the EEOC or a final decision pursuant to Section 1614.108(f). The Notice will also advise the Complainant that (s)he can elect to participate in the Agency's ADR Program for EEO complaints. The Notice will provide that, if chosen, the Complainant must elect to participate in the formal ADR mediation within 10 days of receipt of the Notice and ROI.

If the Complainant elects mediation, (s)he must complete Appendix A-1, ADR Request Form. This form must be immediately provided to OEOCR within the aforementioned 10-day period. Upon receipt of the ADR request form, the 30-day period contained in Section 1614.108(f) will be extended by agreement of the parties for not more than 90 days pending the outcome of the mediation process.

The ADR Coordinator will contact the relevant Sharing Neutrals Program for an assignment of a mediator within 3-5 days of the notification that ADR has been elected by the aggrieved person. Once the mediator has been selected, the ADR Coordinator, will ensure that ADR is completed within the prescribed time frame.

1. The Director/Deputy Director, OEOCR, will identify the appropriate management official(s) to participate in the mediation.
2. The ADR Coordinator will coordinate the mediation effort and assume primary responsibility for logistical arrangements.
3. The mediation process will commence by the ADR Coordinator or Mediator contacting the aggrieved person (and representative, if any) and the appropriate management official to schedule the mediation session. When the parties to the dispute convene, they will sign an Agreement to Mediate (Appendix B).
4. For Regional cases, mediators will be obtained from local Federal Executive Board Sharing Neutrals Programs or other means as appropriate.
5. If ADR mediation is successful, the parties will complete and sign a Mediation Agreement which will describe the resolution to the complaint (Appendix C). Other than allegations concerning a breach of the Agreement, the aggrieved person is precluded from filing a complaint on the issues settled by the Agreement. For cases involving retroactive personnel actions and/or backpay, concurrence from the HR Director is required.
6. If ADR mediation is unsuccessful, the Mediator will report the outcome to the ADR Coordinator and will indicate on the ADR Mediators Reporting Form (Appendix D) that no resolution was reached . The 30-day time period contained in Section 1614.108 (f) will commence upon the date mediation ended.

VI. ROLES AND RESPONSIBILITIES OF PARTICIPANTS

Set forth below are the roles and responsibilities of those individuals who elect to participate in a ADR program using mediation to settle EEO complaints. All parties involved must participate in good faith.

Aggrieved Person, is the individual who has filed an informal/formal complaint of discrimination and is either a current employee or an applicant for employment. The basis of the discrimination complaint will be those provided in Part 1614.

While participation in ADR is voluntary, it is the aggrieved person's responsibility to provide complete, accurate information and relevant documents to the Mediator. The aggrieved person has the right to designate anyone as his/her representative at the counseling/mediation stage. (The ADR

request form indicates that if the aggrieved person designates a lawyer as a representative at the counseling/mediation stage, attorney fees may only be awarded to the aggrieved person during the formal processing of a complaint. Furthermore, if the aggrieved person decides to designate a representative outside of his/her geographical area, the Agency will not be responsible for paying the representative's travel costs, per diem or other expenses).

In order for the mediation process to be initiated, the aggrieved person must agree to participate and sign an Agreement to Mediate. The Agreement to Mediate is the official document to be signed by the parties involved in the dispute that will participate in the ADR mediation Program. By signing the agreement, the parties indicate that they understand the ADR mediation process and the conditions and procedures of participation. (See Appendix B.) After electing to participate in the mediation process, the aggrieved person may opt out of the process anytime within the mediation period.

Director, OEOCR, is responsible for the overall management of the ADR program. S(he) develops and maintains trained staff to implement the ADR program and ensures that the ADR program is in compliance with applicable EEOC and OPM regulations. The Director will identify the appropriate management official(s) to participate in the mediation. The Director manages, implements and evaluates the ADR process.

ADR Coordinator, OEOCR, is responsible for providing whatever explanations are necessary to the aggrieved person concerning the ADR Program. Also, if mediation is unsuccessful, the ADR Coordinator will contact the Counseling Coordinator/Counselor of record and ask him/her to prepare (within the 90 days period provided for informal counseling in Part 1614) the Notice of Right to File a Discrimination Complaint and the EEO Counselor's Report. S(he) also has primary responsibility for any necessary logistical arrangements.

EEO Counselor, is the first point of contact to initiate the EEO informal process, including informing the aggrieved person of the ADR program and providing him/her a copy of the ADR program. When contacted, the EEO Counselor will notify (ASAP) the OEOCR of the initial contact. If mediation is unsuccessful, the Counselor of record will prepare (within the 90 days period provided for informal counseling in Part 1614) the Notice of Right to File a Discrimination Complaint and the EEO Counselor's Report.

Mediator, is a neutral participant who assists in resolving disputes. The Mediator does not have the power to force a decision on either party. It is the parties who make the decision on whether to settle. The Mediator attempts to focus the attention of the parties upon their needs and interests rather than on their rights and positions. During this ADR program, the Mediators will be obtained through the Interagency Sharing Neutrals Program administered by the Department of Health and Human Services (DHHS), Departmental Appeals Board or other appropriate Sharing Neutrals Programs. All Mediators must meet minimum training and qualification requirements.

The Mediator must not give information to anyone about what took place during the mediation. If the matter is resolved during mediation, a Mediation (settlement) agreement is prepared and signed

by the parties. The agreement is binding and enforceable to the same extent as any other agreement. Unless there are allegations concerning a breach of the Agreement the case is closed, and therefore, the aggrieved person is precluded from filing a complaint on the issue settled by the Agreement.

Allegations concerning a breach of the settlement agreement will be processed under the EEOC regulations contained in 29 CFR Part 1614.

If the matter is not resolved during mediation, the Mediator will notify the ADR Coordinator of the need for an EEO counselor to complete the informal process.

Management Official, participation is required during ADR as it is now in the EEO counseling process. The Director, OEOCR, will name the appropriate manager or supervisor that will participate in the ADR program/process. Management is entitled to be represented by DHHS, OGC, at the mediation sessions/process.

Management will abide by the requirements of the ADR program. Management is responsible for providing complete accurate information and relevant documentation to the extent the disclosure of such information is permitted under 29 CFR Part 1614, and relevant Federal statutes. Any travel costs incurred by management are the responsibility of the aggrieved person's organization/component. Every effort will be made to minimize costs.

Representative(s). The aggrieved person is entitled to be represented by anyone in the ADR process. Representatives should attend the mediation sessions. No travel costs for the aggrieved person's representative(s) will be incurred by the Agency. Management is entitled to be represented by DHHS, OGC at the mediation sessions/process.

ADR Advisory Group, consists of representatives from the Office of Equal Opportunity and Civil Rights, Human Resources Management Group, Learning Resources Group, and the American Federation of Government Employees. The Advisory Group that participated in the development of the Pilot ADR plan (Representatives from the Center for Beneficiary Services, Center for Medicaid and State Operations, Center for Health Plans and Providers, Office of Financial Management, Office of Equal Opportunity and Civil Rights, and each of the four Regional Consortia) will continue to play a role as the plan is implemented and evaluated. However, the OEOCR Director may appoint new members to serve on the Advisory Group.

ADR Support Network, is comprised of those individuals who will serve as leaders in promoting the use of ADR to resolve EEO complaints and ensuring a two-way flow of information during the Pilot program. Employees, supervisors, and/or managers who have questions about ADR may consult with any of these individuals.

VII. IMPLEMENTATION

The ADR program will be implemented and training will be conducted through a variety of methods designed to involve customers and inform them about mediation as an alternative to EEO counseling

for informal complaints.

A. **Stakeholders Involvement**

Stakeholders of the ADR Program for Mediating Informal EEO Complaints include:

- a. CMS employees;
- b. CMS managers and supervisors;
- c. AFGE representatives;
- d. Human Resources ;
- e. Office of the General Counsel; and
- f. Learning Resources Group (LRG).

During the development of the program, an advisory group of OEOCR staff, AFGE, and LRG staff will provide input and comments. All customers will actively participate in the evaluation of the program.

B. **Marketing the Program**

The ADR Program for Mediating EEO Complaints will be marketed to customers with the help of the ADR Support Network in the following manner:

1. A memorandum to all employees signed by CMS Administrator;
2. A brochure describing the ADR mediation process as alternative to traditional EEO counseling;
3. An E-mail announcement to all employees when the program begins; and
4. Detailed information concerning the ADR program will be provided in OEOCR's Home Page, including a copy of the program.

C. **Training**

Training about ADR, mediation, and the EEO process will be a vital factor in the successful implementation of the program in CMS. Employees need detailed information about the two alternatives (Counseling or ADR) available at the informal stage. Participants in mediation need to know what to expect and the roles of the parties. Communicating to CMS staff that CMS leadership fully supports ADR is extremely important. Specific ADR training requests by components, offices

or regions will be reviewed and provided by OEOCR on a case by case basis.

The Director, OEOCR, with the assistance of DHHS, will provide an orientation to the Executive Council and senior staff prior to the implementation of the ADR Program. All other managers will receive this orientation briefing during the implementation of the ADR Program.

Employees, and supervisors in CMS will receive briefings on ADR and the mediation program presented by the OEOCR staff at staff meetings or through video conferences. These briefings (approximately 30 minutes each) will be scheduled during the first three months of the program.

ADR Support Network

The ADR Support Network will include approximately 20-30 employees who will serve as leaders in promoting the use of ADR (mediation) to resolve EEO complaints and ensuring a two-way flow of information with OEOCR during the program. Employees, supervisors, or managers who have questions about ADR can consult with these individuals, who will contact the CMS OEOCR, if necessary.

Examples of members of the ADR Support Network include EEO counselors, AFGE representatives, HR staff, CMS OEOCR contacts, LRG staff, and employees with a strong interest in dispute resolution (the number will be proportional to the size of each organization).

Training for the ADR Support Network group will be three-hour sessions covering topics such as: alternative dispute resolution, mediation, interest-based conflict resolution, EEO complaint process, and the program. The primary objective of the training is to create a support network for implementing ADR in all organizations.

The ADR Support Network group identified in the Regional Offices will participate in a video conference to introduce the program.

VIII. EVALUATION

A. Data Requirements

The effectiveness of the program will be evaluated quarterly. The following statistical data will be used:

1. The number of disputes referred to ADR and the number of those referred which were resolved;
2. The parties' level of satisfaction with the ADR process, and the reasons for satisfaction or dissatisfaction (Participant's Comments Form - Appendix E);
3. The amount of time spent attempting to resolve the complaint using the

ADR process; and

4. Estimate of cost savings. Show criteria used to figure cost savings.

B. Data Gathering

The CMS program will be evaluated by using the attached questionnaires, ADR Mediators Reporting Form (Appendix D) and Participants Comments -ADR (Appendix E). The distribution of evaluation questionnaires and the gathering of information will be the responsibility of CMS OEOCR. The ADR Workgroup will have the responsibility of summarizing the information to be evaluated and will develop a semi-annual report on the status and/or accomplishments of the ADR program. A copy of the report will be provided to the Administrator, division directors, managers, AFGE, and ADR Support Network members. As the program evolves, the evaluation concepts along with the measurement tools may be refined or modified.

APPENDIX A

**CENTERS FOR MEDICARE & MEDICAID SERVICES
ALTERNATIVE DISPUTE RESOLUTION REQUEST/REFERRAL
(INFORMAL STAGE)**

- 1. Date of Request/Referral:**

- 2. Name of Requester:**

- 3. Organization of Requester**

- 4. Telephone # of Requester:**

- 5. Occupation of Requester:**

- 6. Name and Telephone # of Representative (if applicable):**

- 7. Briefly summarize the dispute which you wish resolved and identify managers involved in this dispute. Please provide name, telephone number, and position, as appropriate. This information will be used to identify a manager to participate in the Alternative Dispute Resolution process.**

8. Briefly describe the relief or remedy that you seek to resolve this dispute.

I understand that Alternative Dispute Resolution (ADR) is a joint effort between the parties to facilitate an expedited resolution of disputes from and among employees.

I understand that the pre-complaint processing period shall be extended to 90 days for the purposes of resolving the complaint through the ADR process.

I understand that my right to continue with the administrative complaints process, will remain intact and available to me should an agreement not be reached using ADR.

I understand that I have the right to representation (attorney or other person of my choice) throughout this process. I understand that if I designate an attorney as my representative at the counseling/ADR stage, attorney fees may only be awarded during the formal processing of a complaint. Furthermore, if the designated representative is outside the geographical area of the requester, the Agency will not be responsible for paying the representative's travel costs, per diem or other expenses.

I understand that the Director, Office of Equal Opportunity and Civil Rights identifies the manager who will participate in the ADR process, and generally, looks to someone one level above the involved manager.

I understand that my election to engage in ADR in lieu of traditional counseling is final, and I can not withdraw from ADR and proceed through traditional counseling.

Signature of ADR Requester

Date of Request

APPENDIX A-1

**CENTERS FOR MEDICARE & MEDICAID SERVICES
ALTERNATIVE DISPUTE RESOLUTION REQUEST/REFERRAL
(FORMAL STAGE)**

1. Case #:

2. Name of Requester:

3. Organization of Requester:

4. Telephone # of Requester:

5. Occupation of Requester:

6. Name and Telephone # of Representative (if applicable):

7. Briefly summarize the dispute which you wish resolved and identify managers involved in this dispute. Please provide name, telephone number, and position as appropriate. This information will be used to identify a manager to participate in the Alternative Dispute Resolution process.

8. Briefly describe the relief or remedy that you seek to resolve this dispute.

I understand that Alternative Dispute Resolution (ADR) is a joint effort between the parties to facilitate an expedited resolution of disputes from and among employees.

I understand that the 30-day period contained in section 1614.108(f) may be extended by agreement of the parties for not more than 90 days for the purposes of resolving the complaint through the ADR process.

I understand that my right to continue with the administrative complaints process, will remain intact and available to me should an agreement not be reached using ADR.

I understand that I have the right to representation (attorney or other person of my choice) throughout this process. I understand that if I designate an attorney as my representative at the ADR stage, attorney fees may only be awarded during the formal processing of a complaint. Furthermore, if the designated representative is outside the geographical area of the requester, the Agency will not be responsible for paying the representative's travel costs, per diem or other expenses.

I understand that the Director, Office of Equal Opportunity and Civil Rights identifies the manager who will participate in the ADR process, and generally, looks to someone one level above the involved manager.

Signature of ADR Requester

Date of Request

Note: Submit this form to the Office of Equal Opportunity and Civil Rights (OEOCR) North Building, Room N2-22-17. If you have additional questions regarding the process, please contact OEOCR's ADR Coordinator.

APPENDIX B

AGREEMENT TO MEDIATE and CONFIDENTIALITY AGREEMENT

The parties agree to engage in mediation. The parties understand that mediation may be terminated at any time by either party or by the mediator(s). The mediator(s) has/have no authority to decide the case and are not acting as advocates or attorneys for any party. The parties have a right to representation during mediation.

The confidentiality provisions of the Administrative Dispute Resolution Act apply to this mediation. These provisions focus primarily on protecting private communications between parties and the mediator(s). Under the ADR Act, parties' oral communications to the mediator(s) during mediation are protected. The same is true for written communications parties prepare for mediation and give only to the mediator(s).

The parties understand that the ADR Act does not protect oral communications made with all the other parties present or documents a party makes available to all other parties. The parties further understand that they can contract for additional confidentiality. Finally, the parties understand that despite this agreement for additional confidentiality, outside parties may still have access under the Freedom of Information Act to documents which a party makes available to all other parties.

In unusual circumstances, a judge can order disclosure of information that would prevent a manifest injustice, help establish a violation of law, or prevent harm to public health and safety. Further, information concerning fraud and criminal activity or threats of imminent harm will not be considered confidential in this mediation.

No party shall be bound by anything said or done at the mediation, other than this Agreement to Mediate and Confidentiality Agreement, unless a written resolution is reached and executed by all necessary parties. If a resolution is reached, the agreement shall be put in writing and, when signed and approved by the appropriate authorities for all parties shall be binding upon all parties to the agreement.

By signature below, we acknowledge that we have read, understand, and agree to the terms of this Agreement to Mediate and Confidentiality Agreement.

Employee

Date

Employee's Representative

Date

Manager

Date

Manager's Representative

Date

Mediator

Date

Mediator

Date

APPENDIX C

SAMPLE MEDIATION AGREEMENT

On _____, _____(Complainant) initiated/filed a discrimination complaint against the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (Agency), pursuant to 29 C.F.R. 1614 (including the Age Discrimination in Employment Act of 1967, as amended) (Case Number:). The following issue was raised with the EEO Counselor: or The Agency accepted the following claim(s) for investigation: Whether the Complainant was discriminated against on the basis of _____ when:

He/She was

The Agency and the Complainant, the parties to this case, have now reached a mediated agreement (Agreement) and hereby commit to the resolution of the subject complaint as stated herein. The Complainant has been advised that he/she has the right to consult with an attorney prior to executing this Agreement. This Agreement is entered into knowingly and voluntarily by the Agency and the Complainant.

The parties understand that this Agreement is to be regarded as a “no-fault” Agreement and, as such, this Agreement is not intended to and will not be construed as an admission or statement by either party as to the validity or invalidity of any legal position or factual contention advanced in, or the substantive merits of, the above-captioned case. This Agreement is not to be cited as evidence of discrimination or as background information in any other case or dispute involving the agency, its employees, or any other Federal entity.

The terms set forth in this Agreement constitute the complete understanding between the parties. The Agreement may not be modified except in writing and signed by both parties.

CLAIMS RESOLVED

This Agreement resolves all matters, issues, and claims including but not limited to back pay, attorney’s fees, and damages, which are or were alleged, or which might or could have been alleged, either judicially or administratively against the Agency and/or its employees, based on incidents arising out of the instant complaint(s) occurring on or before the effective date of this Agreement.

TERMS OF RESOLUTION

The Agency agrees to:

1)

The Complainant agrees:

1) That by signing this Agreement, he/she withdraws and dismisses with prejudice the above-referenced complaint(s) of discrimination.

If the Complainant believes that the Agency has not complied with the terms of this Agreement, the Complainant may, under 29 C.F.R. 1614.504, notify the Agency's, Director of the Office of Equal Opportunity and Civil Rights (OEOCR), in writing within thirty (30) days of the effective date of the alleged violation, requesting that the terms of the Agreement be specifically implemented. Alternatively, the Complainant may request that the complaint(s) be reinstated for further processing from the point processing ceased.

CONFIDENTIALITY

The parties agree to keep the terms of this Agreement confidential. For purposes of this Agreement, "confidential" means that the facts and issues of the underlying complaints and the terms of the Agreement shall not be disseminated, discussed, or commented upon to anyone other than Agency officials. This prohibition against disclosure includes, but it is not limited to, former or present employees of the Agency not responsible for approval or implementation of the Agreement, members of the mass media, or other organizations. The parties further agree that they will not permit other persons to disclose the terms of this Agreement or make a copy of this Agreement available to anyone not involved in the litigation or effectuation of this Agreement.

RELEASE

In consideration of the promises made by the Agency in this Agreement, the Complainant agrees that this Agreement completely resolves all issues and claims which he/she currently has or may have prior to the date of this Agreement and arising out of or in connection with the instant complaint(s).

Page 2 of 3

AGE DISCRIMINATION IN EMPLOYMENT ACT RIGHTS

(If applicable)

By signing this Agreement, the Complainant agrees to waive rights under the Age

Discrimination in Employment Act of 1967, as amended (ADEA) with respect to the above-referenced complaint(s), but is not waiving rights or claims that may arise under the ADEA after he/she signs this Agreement. The Complainant understands that he/she is receiving benefits from this waiver of rights to which he/she would otherwise not be entitled. The Complainant may consider management’s final offer for up to twenty-one (21) days before signing an Agreement accepting the offer. Further, the Complainant may revoke this Agreement for a period of seven (7) days after signing it and the Agreement shall not become effective or enforceable until this seven (7) day period has expired.

EFFECTIVE DATE

This Agreement shall become effective the date of the last signature to the Agreement.

COMPLAINANT

FOR THE AGENCY

_____	_____	_____	_____
Complainant	Date	Management Official	Date

_____	_____	_____	_____
Complainant’s Representative	Date	Ramon Suris-Fernandez Director Office of Equal Opportunity and Civil Rights	Date

Note: If other signatures are necessary, it will be determined by the OEOCR.

APPENDIX D

CENTERS FOR MEDICARE & MEDICAID SERVICES

ADR MEDIATOR REPORTING FORM

INSTRUCTIONS: This form is to be completed immediately upon closing of your case. Please return the form to the Office of Equal Opportunity and Civil Rights.

1. **ADR Representative's Name:**

2. **Office Telephone Number:**

3. **ADR Case Number:**

4. **Date of Sessions and Time Spent:**

- | | |
|----|----|
| 1. | 5. |
| 2. | |
| 3. | |
| 4. | |

5. **Form of ADR:** **Mediation**

6. **If either party had a representative in attendance please indicate which party did so:**

A. Employee

B. Manager or 2nd Party

1. _____ **Union Rep**
2. _____ **Attorney**
3. _____ **Other**

1. _____ **Union Rep**
2. _____ **Attorney**
3. _____ **Other**

7. **OUTCOME:**

- | | |
|--|------------------------------------|
| _____ Not Settled | _____ Settled prior meeting |
| _____ Settled, agreement signed | _____ Partial settlement |

page-2

8. **If settlement was not reached, please indicate what factors contributed to the lack of a settlement (check all that apply);**

- _____ (1) one or more of the parties would not work to reach a solution;
- _____ (2) all pertinent parties did not appear for the ADR sessions;
- _____ (3) one or more parties did not have authority to settle this case;
- _____ (4) some other reason. (Please be specific)

9. GENERAL: In the preparation process, it was determined that ADR was appropriate to address this dispute. In your opinion was it appropriate in this case?

- a. Yes/No
- b. Why or why not?

10. Other comments or suggestions:

Signature

Date

APPENDIX E

CARE

**Conflicts Addressed and Resolved Expediently
The Centers for Medicare & Medicaid Services'
Mediation Program
Customer Feedback Form**

CARE needs your feedback to know how the program is working and how it may be improved. Your responses will be used for evaluation purposes only. The form is designed for easy completion. Please complete this survey at the end of the mediation process and **fax or mail it within one day** to:

- ADR Coordinator, Centers for Medicare & Medicaid Services
- 7500 Security Boulevard, North Building, Room N2-22-16
- Baltimore, Maryland 21244-1850
- Private fax: **410-786-9549** (no cover sheet needed)
- Web Site: <http://cmsnet.cms.hhs.gov/hpages/oeocr/adr.htm>

Thank you very much for your time and assistance in providing feedback on CMS's Mediation Program.

Date(s) of Mediation:	How many hours did the mediation last?
Customer Category: employee _____ manager _____ representative _____	
Mediation Outcome: Full settlement _____ Partial settlement _____ No settlement _____	

Item	Please mark one option for each question.	Excellent	Good	Average	Fair	Poor
1	How well did the mediator(s) explain the process to all the parties?					
2	How well were you able to present your case?					
3	How well did the mediator(s) listen?					
4	How well did the mediator(s) understand the issues involved?					
5	How well did the mediator(s) clarify key issues and interests of each party?					
6	How well did the mediator(s) help create realistic options for settling the dispute?					
7	How do you rate the impartiality of the mediator(s)?					

Item	Please mark one option for each question.	Excellent	Good	Average	Fair	Poor
8	How well did the mediator(s) create a positive atmosphere?					
9	How would you rate the mediator(s) overall?					
10	How do you rate the outcome of the mediation?					
11	How beneficial was the use of a neutral party from another federal agency?					
12	If this was a co-mediation, how beneficial was having two mediators?					
13	How appropriate was mediation for this matter?					
14	How do you rate the timeliness of the mediation (length of time since your request for mediation)?					
15	How do you rate the convenience of the mediation location?					
16	How do you rate the mediation in satisfying your needs?					
17	Were the right parties at the mediation? Yes _____ No _____ If no, who should have been there instead?					
18	Did you have a representative to assist you in the mediation? Yes _____ No _____					
19	How did the mediation change your opinion of the other party? For the better _____ For the worse _____ No change _____					
20	Would you recommend mediation to a co-worker? Yes _____ No _____ If no, why not?					
21	Would you use mediation again? Yes _____ No _____ If no, why not?					
22	Please list any other benefits from the mediation, e.g., relationships repaired, money saved, productivity improved, communication enhanced.					
Comments and Suggestions for Improvement:						

Thank you very much! The fax or address to use for this form are on Page 1.