

**444 - NOTICE AND APPEAL REQUIREMENTS (SERIOUS MENTAL ILLNESS APPEALS)**

EFFECTIVE DATES: 07/01/16, 10/01/17, 10/01/19

APPROVAL DATES: 03/20/18, 05/30/19

**I. PURPOSE**

This Policy applies to ALTCS E/PD, DES/DDD (DDD), and RBHA Contractors. The purpose of this Policy is to ensure that persons seeking or receiving behavioral health services and persons seeking an SMI eligibility determination are provided notice and the opportunity to Appeal as required under Arizona Administrative Code (A.A.C.) R9-21-401.

**II. DEFINITIONS**

<b>ACTION</b>	The Denial or Limited Authorization of a requested behavioral health service. This includes: <ol style="list-style-type: none"><li>1. Type or level of service;</li><li>2. Reduction, suspension or termination of a previously authorized service;</li><li>3. Denial, in whole or in part, of payment for a service;</li><li>4. Failure to provide covered services in a timely manner;</li><li>5. Failure to act within established timeframes for resolving an Appeal or complaint and providing notice to affected parties; and</li><li>6. Denial of the Title XIX/XXI eligible person's request to obtain covered services outside the network.</li></ol>
<b>APPEAL</b>	A request for review of a decision made by AHCCCS, a Contractor or a Contractor's provider.
<b>DENIAL</b>	The decision to deny a request made by, or on behalf of, a behavioral health recipient for the authorization and/or payment of a covered service.
<b>LIMITED AUTHORIZATION</b>	A service authorization that falls short of the original request, with respect to the duration, frequency, or type of service requested.

<b>PRIOR AUTHORIZATION</b>	A process used to determine in advance of provision whether or not a prescribed procedure, service, or medication will be covered. The process is intended to act as a safety and cost savings measure.
<b>QUALIFIED CLINICIAN</b>	A behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified professional.
<b>REDUCTION OF SERVICE</b>	A decision to reduce the frequency or duration of an ongoing behavioral health service. A Reduction of Service does not include a planned change in service frequency or duration that is initially identified in the person's service plan and agreed to in writing by the person receiving services or his/her legal guardian.
<b>SUSPENSION OF SERVICE</b>	A decision to temporarily stop providing a behavioral health service.
<b>TERMINATION OF SERVICE</b>	A decision to stop providing a covered behavioral health service.

### **III. POLICY**

#### **A. APPLICABILITY**

This policy applies to decisions made by the Contractors or the Contractors' subcontracted providers regarding SMI eligibility, the need for, the timely provision of, or the continuation of services, and charges or co-payments for behavioral health services.

This Policy does not apply to:

1. Allegations of rights violations made by enrolled persons with a Serious Mental Illness (See ACOM Policy 446).
2. Actions or decisions that deny, suspend, reduce, or terminate a person's services or benefits as a result of changes in state or federal law which require an automatic change, or in order to avoid exceeding the state funding legislatively appropriated for those services or benefits.
3. Determinations of categorical eligibility/ineligibility for Title XIX or Title XXI services.
4. TXIX Appeals of an Action affecting services subject to Prior Authorization for individuals eligible for Title XIX/XXI covered services.

**A. PROCEDURES**

1. General Requirements for Notices and Appeals

a. Computation of Time

- i. In computing any time prescribed or allowed by this policy, the period begins the day after the act, event or decision occurs. If the period is 11 days or more, the time period shall be calculated using calendar days, which means that weekends and legal holidays are counted. If, however, the time period is less than 11 days and is not specifically designated as calendar days, the time period is calculated using working days, in which case, weekends and legal holidays shall not be included in the computation. In either case, if the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

b. Language and Format Requirements

- i. Notice and written documents generated through the Appeals process shall be available in each prevalent, non-English language spoken within the geographic service area,
- ii. AHCCCS, the Contractors and subcontracted providers shall provide oral interpretation services at no charge to the behavioral health recipient to explain information contained in the notice or as part of the Appeal process for all non-English languages, and
- iii. Notice and written documents generated through the Appeals process shall be available in alternative formats, such as Braille, large font, or enhanced audio, and take into consideration the special communication needs of the person applying for or receiving behavioral health services, and notice and written documents shall be written using an easily understood language and format.

c. Delivery of Notices

- i. All notices and Appeal decisions identified herein shall be personally delivered or mailed by certified mail to the required party at their last known residence or place of work. In the event that it may be unsafe to contact the person at his or her home address, or the person has indicated that he or she does not want to receive mail at home, the alternate methods identified by the person for communicating notices shall be used.

d. Prohibition of Punitive Action

- i. AHCCCS, the Contractors and the Contractors' subcontracted providers are prohibited from taking punitive Action against persons exercising their right to Appeal.

2. Notice Requirements

a. Notices pursuant to this section shall be delivered to:

- i. The member/guardian/designated representative, and for members identified as in need of Special Assistance, this includes the person designated to meet the Special Assistance needs.

- b. Provision of notice shall be evidenced by retaining a copy of the notice in the comprehensive clinical record of the person receiving or requesting services.
  3. Notices for persons being evaluated for or who have been determined to have SMI
    - a. The Contractor shall provide Attachment A to each person at the time of evaluation for an SMI eligibility determination,
    - b. Contractors and Contractors' subcontracted providers shall provide a copy of Attachment B at the time of admission to the agency for evaluation or treatment. The person receiving this notice shall acknowledge in writing the receipt of the notice and this written acknowledgement shall be retained in the person's comprehensive clinical record. Contractors and Contractors' subcontracted providers shall post Attachment B, in both English and Spanish, so that it is readily visible to persons visiting the agency,
    - c. The Contractor shall provide Attachment C when:
      - i. Initial eligibility for SMI services is determined. The notice shall be sent within three days of the eligibility determination,
      - ii. A decision is made regarding fees or waivers thereof,
      - iii. An assessment report, Service Plan or Inpatient Treatment and Discharge Plan is developed, provided or reviewed,
      - iv. A decision is made to modify the service plan or to deny, reduce, suspend or terminate a service that is a non-Title XIX/XXI covered service. No notice is required when the requested service requires a physician's order, and the Denial, reduction, suspension or termination is due to the physician's refusal to order the service. Decisions to modify the service plan to deny, reduce, suspend or terminate a service that is Title XIX/XXI covered requires notification pursuant to the requirements identified in RBHA Contract. Notice shall be provided at least 30 days prior to the effective date of the change unless the person agrees to the change in writing or a Qualified Clinician determines that the Action is necessary to avoid a serious or immediate threat to the health or safety of the person receiving services or others,
      - v. A decision is made that the person is no longer eligible for SMI services, or
      - vi. A PASRR determination, in the context of either a preadmission screening or an annual resident review, is made which adversely affects the person.
    - d. Every Contractor and Contractor subcontracted provider shall post Attachment D, so that it is readily visible to persons visiting the agency and shall provide a copy of this form to the person at the time of discharge from the agency.
4. Notices for Non-SMI/Non-Title XIX/XXI populations
  - a. Notice is not required to persons who are not eligible for Title XIX/XXI or SMI services for service decisions under this policy.
5. Appeal Requirements
  - a. Agency Responsible for Processing Appeals

- i. Each Contractor is responsible for processing Appeals pursuant to the requirements described within this policy. The processing of Appeals shall not be delegated by the Contractor.
    - ii. Upon request, the Contractor shall provide assistance in explaining the Appeal process or in reducing the Appeal in writing to the appropriate Appeal form.
  - b. Time frames for Filing an Appeal
    - i. Appeals shall be filed orally or in writing with the responsible Contractor within 60 days from the date of the decision being appealed. Late Appeals shall be accepted upon a showing of good cause.
  - c. Extension of Appeal Timeframes
    - i. An extension of the Appeal timeframes required in this policy may be secured either at the request of the appellant or with the permission of the Contractor's Director or AHCCCS Director or designee. An extension of time may only be approved upon a showing of necessity and that the delay will not pose a threat to the safety or security of the behavioral health recipient. Documentation of the reason for and approval of the extension of time shall be maintained in the Appeal case record.
  - d. Who May File an Appeal (i.e. the Appellant)
    - i. An adult applying for or receiving services, his or her legal guardian, guardian ad litem, designated representative or attorney, and for persons identified as in need of Special Assistance, this includes the person designated to meet the Special Assistance needs,
    - ii. A legal guardian, parent with legal custody, court-appointed guardian ad litem, or court-appointed attorney of a person under the age of 18 years,
    - iii. A state or governmental agency that has executed an Intergovernmental Agreement/Interagency Service Agreement (IGA/ISA) with AHCCCS for the provision of behavioral health services to persons served by the governmental agency, but which does not have legal custody or control of the person, to the extent specified in the ISA/IGA between the agency and AHCCCS, or
    - iv. A provider acting on the behavioral health recipient's behalf and with the written authorization of the recipient.
6. Case Docketing Requirements
  - a. The Contractor shall use a unique docket number on each Appeal filed. The file and all correspondence generated shall reference the docket number.
7. Examination of Appeal Case Record
  - a. Upon request, an appellant shall be given an opportunity to examine the contents of the Appeal case record. In addition, AHCCCS or the Contractor shall give the appellant an opportunity to examine all documents and records to be used at an informal conference and administrative hearing. AHCCCS and/or the Contractor may deny access to records contained in the Appeal case record if permitted by State and Federal law.

8. Appeal Case Records

- a. The Contractor will maintain Appeal case records in the following manner:
  - i. All documentation received for entry into the Appeal case record will be date stamped on the day received.
  - ii. An Appeal case record shall be maintained for each request to file an Appeal and shall include:
    - 1) A docket number,
    - 2) The original request for Appeal. If the Appeal was filed orally or the Appeal is not on Attachment A, the form shall be completed by the Contractor for each Appeal filed,
    - 3) Copies of all documents generated or acquired through the Appeal process, and
    - 4) The Contractor and AHCCCS shall maintain all records pertaining to an Appeal in a secure and locked place until the appellant's administrative and legal remedies are exhausted or time allowed for an Appeal has expired. Thereafter, AHCCCS and the Contractor shall maintain all Appeal files in a secure designated area and retain for at least five years.

9. Standard and Burden of Proof

- a. The standard of proof on all issues on Appeal shall be the preponderance of the evidence, and
- b. The burden of proof for all issues on Appeal is on the individual or agency appealing (see A.A.C. R9-21-401.I for limited exceptions).

10. Appeal Process for Persons with a Serious Mental Illness

- a. The Appeal process for persons designated as SMI applies to all persons who have been determined SMI eligible and to persons disputing an SMI eligibility determination,
- b. Title XIX/XXI eligible persons with a SMI who are Appealing an Action (see definition) affecting Title XIX/XXI covered services may elect to use either the Title XIX/XXI Appeal process as outlined in Contract, or the Appeal process for persons with a SMI, and
- c. An Appeal may be filed for one or more of the following. An Appeal may not be filed when the contested decision involves a request for a service that requires a physician's order, and the physician refuses to order the service:
  - i. Decisions regarding the person's SMI eligibility determination,
  - ii. Sufficiency or appropriateness of the assessment,
  - iii. Long-term view, service goals, objectives or timelines stated in the Individual Service Plan (ISP) or Inpatient Treatment and Discharge Plan (ITDP),
  - iv. Recommended services identified in the assessment report, SP or ITDP,
  - v. Actual services to be provided, as described in the ISP, plan for interim services or ITDP,
  - vi. Access to or prompt provision of services,

- vii. Findings of the clinical team with regard to the person's competency, capacity to make decisions, need for guardianship or other protective services or need for Special Assistance,
- viii. Denial of a request for a review of, the outcome of, a modification to or failure to modify, or termination of an SP, ITDP or portion of an ISP or ITDP,
- ix. Application of the procedures and timeframes for developing the ISP or ITDP,
- x. Implementation of the ISP or ITDP,
- xi. Decision to provide service planning, including the provision of assessment or case management services to a person who is refusing such services, or a decision not to provide such services to the person,
- xii. Decisions regarding a person's fee assessment or the Denial of a request for a waiver of fees,
- xiii. Denial of payment of a claim,
- xiv. Failure of the Contractor or AHCCCS to act within the timeframes regarding an Appeal, or
- xv. A PASRR determination, in the context of either a preadmission screening or an annual resident review, which adversely affects the person.

#### 11. Continuation of SMI services

- a. If the Appeal relates to the modification or termination of a behavioral health service, the service under Appeal shall continue pending the resolution of the Appeal through the final agency decision, unless:
  - i. A Qualified Clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the person or another individual, or
  - ii. The person or guardian, if applicable, agrees in writing to the modification or termination.

#### 12. Standard Appeal Process

- a. Within five working days of receipt of an Appeal, the Contractor shall inform the appellant in writing that the Appeal has been received and of the procedures that will be followed during the Appeal,
- b. If the RBHA refuses to accept a late Appeal or determines that the issue may not be appealed the RBHA shall inform the appellant writing that he or she may, within 10 days of his/her receipt of the RBHA decision, request an Administrative Review of the decision with AHCCCS. This does not include those Actions or decisions described in Section A of this Policy to which this Policy does not apply, and
- c. If a timely request for Administrative Review is filed with AHCCCS of the Contractor's decision as specified in this Policy, AHCCCS shall issue a final decision of within 15 days of the request.

#### 13. Informal Conference with the Contractor

- a. Within seven days of receipt of an Appeal, the Contractor shall hold an informal conference with the appellant (including any guardian, guardian ad litem,

designated representative, attorney, or case manager or other representative of the service provider, as applicable). If the appellant has been identified as needing Special Assistance, the Contractor shall contact the appellant's advocate, if no advocate has been assigned to the appellant, the Contractor shall contact AHCCCS Office of Human Rights and request that an advocate be present to assist the client during the informal conference and any other part of the Appeal process,

- b. The Contractor shall schedule the conference at a convenient time and place and inform all participants in writing, two days prior to the conference, of the time, date and location, the ability to participate in the conference by telephone or teleconference, and the appellant's right to be represented by a designated representative of the appellant's choice,
- c. The informal conference shall be chaired by a representative of the Contractor with authority to resolve the issues under Appeal, who shall seek to mediate and resolve the issues in dispute,
- d. The Contractor representative shall record a statement of the nature of the Appeal, the issues involved, any resolution(s) achieved, the date by which the resolution(s) will be implemented, and identify any unresolved issues for further Appeal,
- e. If the issues in dispute are resolved to the satisfaction of the appellant, the Contractor shall issue a dated written notice to all parties, which shall include a statement of the nature of the Appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented,
- f. If the issues in dispute are not resolved to the satisfaction of the appellant and the issues in dispute do not relate to the appellant's eligibility for behavioral health services, the appellant shall be informed that the matter will be forwarded for further Appeal to AHCCCS for informal conference, and of the procedure for requesting a waiver of the AHCCCS informal conference,
- g. If the issues in dispute are not resolved to the satisfaction of the appellant and the issues in dispute relate to the appellant's eligibility for SMI services or the appellant has requested a waiver of the AHCCCS informal conference in writing, the Contractor shall:
  - i. Provide written notice to the appellant of the process to request an administrative hearing,
  - ii. Determine at the informal conference whether the appellant is requesting the Contractor to request an administrative hearing on behalf of the appellant and, if so, file the request with AHCCCS within three days of the informal conference,
  - iii. For a person who is in need of Special Assistance, send a copy of the Appeal, results of informal conference and notice of administrative hearing referenced in this Policy to the AHCCCS Office of Human Rights, and
  - iv. If the appellant fails to attend the informal conference and fails to notify the Contractor of his or her inability to attend prior to the scheduled conference, the Contractor shall reschedule the conference in accordance with the requirements of this Policy. If the appellant fails to attend the rescheduled



conference and fails to notify the Contractor of his or her inability to attend prior to the rescheduled conference, the Contractor shall close the Appeal docket and send written notice of the closure to the appellant.

- 1) If the appellant requests the Appeal be re-opened due to not receiving the informal conference notification and/or due to other good cause, the Contractor may re-open the Appeal and proceed with the informal conference.
- 2) For all Appeals unresolved after an informal conference with the Contractor, the Contractor shall forward the Appeal case record to AHCCCS within three days from the conclusion of the informal conference.

#### 14. AHCCCS Informal Conference

- a. Unless the appellant waives an informal conference with AHCCCS, or the issue on Appeal relates to eligibility for SMI services, AHCCCS shall hold a second informal conference within 15 days of the notification from the Contractor that the Appeal was unresolved.
  - i. At least five days prior to the date of the second informal conference, AHCCCS shall notify the participants in writing of the date, time and location of the conference,
  - ii. The informal conference shall be chaired by a representative of AHCCCS who shall seek to mediate and resolve the issues in dispute,
  - iii. The AHCCCS representative shall record a statement of the nature of the Appeal, the issues involved, any resolution(s) achieved, the date by which the resolution(s) will be implemented, and identify any unresolved issues for further Appeal, and
  - iv. If the issues in dispute are resolved to the satisfaction of the appellant, AHCCCS shall issue a dated written notice to all parties, which shall include a statement of the nature of the Appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
    - 1) For a person in need of Special Assistance, AHCCCS shall send a copy of the informal conference report to AHCCCS Office of Human Rights.
  - v. If the issues in dispute are not resolved to the satisfaction of the appellant, AHCCCS shall:
    - 1) Provide written notice to the appellant of the process to request an administrative hearing,
    - 2) Determine at the informal conference whether the appellant is requesting AHCCCS to request an administrative hearing on behalf of the appellant and, if so, file the request within three days of the informal conference,
    - 3) For a person who is in need of Special Assistance, send a copy of the notice as specified in this Policy to AHCCCS Office of Human Rights,
    - 4) In the event the appellant fails to attend the informal conference and fails to notify AHCCCS of his or her inability to attend prior to the scheduled conference, AHCCCS may issue a written notice, within three working

days of the scheduled conference, which contains a description of the decision on the issue under Appeal and advises the appellant of his or her right to request an Administrative Hearing, and

- 5) In the event the appellant requests the Appeal be re-opened due to not receiving the informal conference notification and/or due to other good cause, AHCCCS may re-open the Appeal and proceed with the informal conference.

#### 15. Requests for Administrative Hearing

- a. A written request for hearing filed with AHCCCS shall contain the following information:
  - i. Name of the appellant and person receiving services (if different) and the case docket number),
  - ii. The decision being appealed,
  - iii. The date of the decision being appealed, and
  - iv. The reason for the Appeal.
- b. In the event a request for administrative hearing is filed with the Contractor, the Contractor shall ensure that the written request for hearing, Appeal case record and all supporting documentation is received by the AHCCCS within 3 days from such date, and
- c. Administrative hearings shall be conducted and decided pursuant to A.R.S. §41-1092 et seq.

#### 16. Expedited Appeals

- a. At the time an Appeal is initiated, the appellant may request an expedited Appeal in writing. The Contractor shall accept requests to expedite an Appeal for good cause, and for the following:
  - i. The Denial of admission to or the termination of a continuation of inpatient services, or
  - ii. A Denial or termination of crisis or emergency services.
- b. Within one day of receipt of a request for an expedited Appeal, the Contractor shall:
  - i. Inform the appellant in writing that the Appeal has been received and of the time, date and location of the expedited informal conference, or
  - ii. Issue a written decision stating that the Appeal does not meet criteria as an expedited Appeal and that the appellant may, within three days of the Contractor's decision, request an Administrative Review of the Contractor's decision from AHCCCS.
- c. If the appellant requests an Administrative Review on a timely basis, AHCCCS shall complete the review and issue a written decision within one day from the date of receipt. The decision of AHCCCS shall be final.

17. Contractor Expedited Informal Conference

- a. Within two days of receipt of a written request for an expedited Appeal, the Contractor shall hold an informal conference to mediate and resolve the issues in dispute.

18. AHCCCS Expedited Informal Conference

- a. Within two days of notification from the Contractor, AHCCCS shall hold an informal conference to mediate and resolve the issue in dispute, unless the appellant waives the conference, in which case the Appeal shall be forwarded within one day to AHCCCS to schedule an administrative hearing, or
- b. If the AHCCCS informal conference is not waived, and it fails to resolve the Appeal, within one day of the informal conference, the Appeal shall be forwarded to AHCCCS to schedule an administrative hearing.

19. Non-SMI/Non-Title XIX/XXI Member Appeals

- a. This process applies to Actions or decisions related to determination of need for Non-SMI, Non-Title XIX/XXI funded, covered behavioral health services.
- b. The Contractor in processing the Appeal, shall:
  - i. Inform the appellant in writing within five working days of receipt that the Appeal has been received and of the procedures that will be followed during the Appeal,
  - ii. Provide the appellant a reasonable opportunity to present evidence and allegations of fact or law in person and in writing, and
  - iii. Provide a written decision no later than 30 days from the day the Appeal is received. The decision shall include a summary of the issues involved, the outcome of the Appeal, and the basis of the decision. For Appeals not resolved wholly in favor of the appellant, the Contractor shall advise the appellant in writing of their right to request an administrative hearing with AHCCCS no later than 30 days from the date of the Contractor's decision, and how to do so.
- c. Requests for Administrative Hearing
  - i. A written request for hearing filed with AHCCCS shall contain the following information:
    - 1) Case name (name of the applicant or person receiving services, name of the appellant and the docket number),
    - 2) The decision being appealed,
    - 3) The date of the decision being appealed, and
    - 4) The reason for the Appeal.
  - ii. In the event a request for administrative hearing is filed with the Contractor, the Contractor shall ensure that the written request for hearing, Appeal case record and all supporting documentation is received by AHCCCS within three days.