

446 GRIEVANCES AND INVESTIGATIONS CONCERNING PERSONS WITH SERIOUS MENTAL ILLNESS

EFFECTIVE DATE: October 1, 2019

REFERENCES: A.R.S. Title 32, Chapter 33; A.R.S. §§ 41-1092 et seq., A.R.S. § 36-550; A.A.C. R9-21-101(B), A.A.C. R9-21-403, A.A.C. R9-21-406, A.A.C. R9-21-410(B), ACOM Policy 444, AMPM Policy 960; ACOM Policy 446, Attachment A, AHCCCS Appeal or SMI Grievance Form (English and Spanish Versions)

This Policy applies to the Division's Administrative Services Subcontractors and outlines the process related to grievances and investigations concerning persons with a Serious Mental Illness (SMI).

This Policy does not apply to grievances or requests for investigation asserted by, or on behalf of, persons with an SMI to the extent the allegation asserts a violation relating to the right to receive services, supports, and/or treatment that are state-funded and are no longer funded by the state due to limitations on legislative appropriation.

Definitions

- A. **Abuse** - The infliction of, or allowance of, another person to inflict or cause physical pain or injury, impairment of bodily function, disfigurement, or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody, or control of a member receiving behavioral health services or community services. Abuse also includes sexual misconduct, assault, molestation, incest, or prostitution of, or with, a member under the care of personnel of a mental health agency. - A.A.C. R9-21-101(B).
- B. **Administrative Appeal** - An appeal to AHCCCS of a decision made by an AdSS as the result of a grievance.
- C. **Appeal** - A request for review of an adverse decision by an AdSS.
- D. **Condition Requiring Investigation** - An incident or condition that appears to be dangerous, illegal, or inhumane, including the death of a person with Serious Mental Illness.
- E. **Dangerous** - A condition that poses or posed a danger or the potential of danger to the health or safety of a person with Serious Mental Illness.
- F. **Day** - means calendar days, unless otherwise specified.
- G. **Grievance or Request for Investigation** - A complaint that is filed by a person with Serious Mental Illness or other concerned person alleging a violation of an SMI member's rights or a condition requiring an investigation.
- H. **Illegal** - An incident or occurrence that is or was likely to constitute a violation of a state or federal statute, regulation, court decision, or other law.
- I. **Inhumane** - An incident, condition, or occurrence that is demeaning to a person with

Serious Mental Illness or that is inconsistent with the proper regard for the right of the person to humane treatment.

- J. Mental Health Agency - Includes a regional authority, service provider, inpatient facility, or an agency that conducts screening and evaluation under A.A.C. Title 9, Chapter 21, Article 5, and A.A.C. R9-21-101(B)(47).
- K. Preponderance of Evidence - A standard of proof that it is more likely than not that an alleged event occurred.
- L. Serious Mental Illness - A condition as defined in A.R.S. § 36-550 diagnosed in persons 18 years and older.
- M. Special Assistance - The support provided to a person determined to have a Serious Mental Illness who is unable to articulate treatment preferences and/or participate effectively in the development of the Planning Document, Inpatient Treatment and Discharge Plan (ITDP), or grievance and/or appeal processes due to cognitive or intellectual impairment and/or medical condition.

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For members who have been diagnosed with a Serious Mental Illness, the AdSS must conduct investigations into allegations of physical abuse, sexual abuse, and violations of rights, and conditions that are dangerous, illegal, or inhumane. Investigations may also be conducted in the event of a death of a member that occurs in a mental health agency or as a result of an action of a person employed by a mental health agency.

General Requirements

- A. The AdSS must respond to grievances and requests for investigations in accordance with this Policy and the requirements and timelines contained in A.A.C. Title 9, Chapter 21, Article 4.
- B. In computing any period of time prescribed or allowed by this Policy, the period begins the day after the act, event, or decision occurs and includes all calendar days and the final day of the period. 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. If the period of time is not designated as calendar days and is less than 11 days, then intermediate Saturdays, Sundays, and legal holidays must not be included in the computation.
- C. The AdSS must use a unique docket number for each grievance or request for investigation filed. The file and all correspondence generated must reference the docket number.

Resolving Grievances and Requests for Investigation

- A. Grievances involving an alleged rights violation, or a request for investigation involving an allegation that a condition requiring investigation exists, which occurred in an agency operated by an AdSS or one of its subcontracted providers and which does not involve a member death or an allegation of physical or sexual abuse, must be filed with and investigated by the AdSS.
- B. Grievances or requests for investigation involving physical or sexual abuse or death must be filed with, and investigated by, AHCCCS.
- C. The AdSS or its subcontractor must immediately take whatever action may be reasonable to protect the health, safety and security of any member, complainant or witness when a grievance or request for investigation is pending.

Grievance and Request for Investigation Process

- A. Timeliness and Method for Filing Grievances and Requests for Investigation
 - 1. A grievance or a request for investigation must be submitted to the AdSS or its subcontracted providers, orally or in writing, no later than 12 months from the date on which the alleged violation or condition requiring investigation occurred. This timeframe may be extended for good cause as determined by AHCCCS or the AdSS, as applicable.
 - 2. Within five days of receipt of a grievance or request for investigation, the AdSS must inform the person filing the grievance or request for investigation, in writing, that the grievance or request has been received.
 - 3. Any employee or contracted staff of the AdSS or its subcontracted providers, must, upon request, assist a person receiving services, or his/her legal guardian, in making an oral or written grievance or request for investigation or direct the person to an available supervisory or managerial staff who will assist the person to file a grievance or request for investigation ((A.A.C. R9-21-403(F)).
 - 4. If an AdSS or its subcontracted provider receives an oral grievance or request for investigation, it must accurately reduce it to writing on the AHCCCS Appeal or SMI Grievance Form (See ACOM Policy 446, Attachment A, Appeal or SMI Grievance Form, adopted by the Division for use by the AdSS).
- B. Summary Disposition – AHCCCS or the AdSS may summarily dispose of a grievance or request for investigation without any notice or right for further review or hearing when:
 - 1. The alleged violation occurred more than one year prior to the date the grievance or request is received, or
 - 2. The grievance or request is primarily directed to the level or type of mental health treatment provided and can be fairly and efficiently addressed through the service planning or appeal process as described in A.A.C. Title 9, Chapter

21, Articles 3 and 4.

C. Disposition Without Investigation - Within seven days of receiving a grievance or request for investigation, it may be resolved without conducting a full investigation if the matter:

1. Involves no material dispute as to the facts alleged in the grievance or request for investigation
2. Is frivolous, meaning that it:
 - a. Involves conduct that is not within the scope of A.A.C. Title 9, Chapter 21
 - b. Is impossible on its face
 - c. Is substantially similar to conduct alleged in two previous grievances or requests for investigation within the past year and which have been determined to be unsubstantiated, or
3. Is resolved fairly and efficiently within seven days without a formal investigation.

Within seven days of the receipt of the grievance or request for investigation, a written dated decision must be issued that explains the essential facts as to why the matter may be appropriately resolved without investigation and the resolution. The written decision must contain a notice of appeal rights and information to request assistance from the AHCCCS Office of Human Rights (OHR) and the State Protection and Advocacy System. Copies of the decision must be sent to the person filing the grievance or request for investigation, to the AHCCCS OHR for persons who need Special Assistance, and to other parties as required by A.A.C. Title 9 Chapter 21, Article 4.

D. Conducting Investigations of Grievances

1. Investigations must be conducted pursuant to A.A.C. R9-21-406. The investigator must:
 - a. Interview the person who filed the grievance and the person receiving services who is identified as the subject of the violation or abuse (if different) prior to interviewing the person alleged to be the perpetrator of the rights violation, or physical or sexual abuse.
 - b. If the person who is the subject of the investigation has been identified as needing Special Assistance, the investigator must contact the person's advocate; or if no advocate is assigned, the investigator must contact AHCCCS OHR, and request that an advocate be present to assist the person during the interview and any other part of the investigation process.
 - c. Request assistance from the AHCCCS OHR if the person receiving

- services needs assistance to participate in the interview and any other part of the investigation process.
- d. Prepare a written report that contains at a minimum:
 - i. A summary for each individual interviewed of information provided by the individual during the interview conducted
 - ii. A summary of relevant information found in documents reviewed
 - iii. A summary of any other activities conducted as a part of the investigation
 - iv. A description of any issues identified during the course of the investigation that, while not related to the allegation or condition under investigation, constitutes a rights violation or condition requiring investigation
 - v. A conclusion, describing those findings and/or factors that led to the conclusion, that the alleged violation or abuse is either substantiated or not substantiated based on a preponderance of the evidence, and
 - vi. Recommended actions or a recommendation for required corrective action, if indicated.
2. Within five days of receipt of the investigator's report, AHCCCS's Deputy Director or the AdSS's CEO or designee will review the investigation case record and the report, and issue a written, dated decision that will:
- a. Accept the report and state a summary of findings and conclusions, and any recommended actions or corrective action required, and send copies of the decision, subject to confidentiality requirements to the investigator, the AdSS, the person who filed the grievance, the person receiving services identified as the subject of the grievance (if different), the AHCCCS Office of Human Rights for a person in need of Special Assistance, and the applicable independent oversight committee. The decision will include a notice of the right to request an appeal of the decision within 30 days from the date of receipt of the decision. The decision will be sent to the grievant by certified mail or by hand-delivery, or
 - b. Reject the report for insufficiency of facts and return the matter for further investigation. The investigator must complete the further investigation and deliver a revised report within 10 days, absent extension.
3. Actions that may be taken or recommended, as indicated above, include:
- a. Identifying training or supervision for, or disciplinary action against, an

- individual found to be responsible for a rights violation or condition requiring investigation identified during the course of investigation
- b. Developing or modifying a mental health agency's practices or protocols
 - c. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation
 - d. Imposing sanctions that may include monetary penalties, according to the terms of a contract, if applicable.
4. A grievant or the member who is the subject of the grievance, who disagrees with the final decision of the AdSS, may file a request for an administrative appeal with AHCCCS within 30 days from the date of the receipt of the decision. The request for administrative appeal must specify the basis for the disagreement. Failure to specify the basis for the disagreement may result in a summary determination in favor of the Division's decision.
5. If an administrative appeal is filed, the AdSS must forward the full investigation case record, which includes all elements described in A.A.C. R9-21-409(D)(1), to AHCCCS. The failure of the AdSS to forward a full investigation case record that supports the AdSS's decision may result in a summary determination in favor of the person filing the administrative appeal. The AdSS must prepare and send, with the investigation case record, a memo that states:
- a. Any objections the AdSS has to the timeliness of the administrative appeal
 - b. The AdSS's response to any information provided in the administrative appeal that was not addressed in the investigation report, and
 - c. The AdSS's understanding of the basis for the administrative appeal.
6. Within 15 days of receipt of a timely filed administrative appeal, AHCCCS will review the appeal and the investigation case record and may discuss the matter with any of the persons involved or convene an informal conference, and prepare a written, dated decision that either:
- a. Accepts the investigator's report with respect to the facts as found, and affirms, modifies, or rejects the decision of the AdSS with a statement of reasons. The decision, along with a notice of the right to request an administrative hearing within 30 days from the date of receipt of the decision, must be sent to the appealing party, with copies of the decision provided to the AdSS, AHCCCS OHR, and the applicable independent oversight committee; or
 - b. Rejects the investigator's report for insufficiency of facts and remands the matter with instructions to the AdSS for further investigation and

decision. The AdSS must conduct further investigation and complete a revised report and decision to AHCCCS within 10 days, after which AHCCCS will render a final decision. Or AHCCCS may reject the investigator's report for insufficiency of facts and remand the matter with instructions to the AdSS for further investigation and the issuance of a revised AdSS's decision, directly to grievant or client who is the subject of the grievance, along with notification of the right to request a second administrative appeal to AHCCCS of the AdSS's revised decision within 30 days from the date of receipt of the revised decision.

7. Extensions of Time - If an extension of any time frame related to the grievance process is needed, the extension must be requested and approved in compliance with A.A.C. R9-21-410(B). Specifically:
 - a. The AdSS investigator or any other AdSS official responsible for responding to grievances must address the extension request to the AdSS Director or designee,
 - b. The AHCCCS investigator or any other AHCCCS official responsible for responding to grievances must address the extension request to the AHCCCS Deputy Director or designee,
 - c. An AdSS request for an extension to complete an investigation for grievances remanded pursuant to A.A.C. R9-21-407(B)(2) or any other time period established by AHCCCS decisions relating to a grievance must be addressed to the AHCCCS Deputy Director or designee, and
 - d. Requests for extension must be in writing, with copies to all parties.

Request for an Administrative Hearing

A grievant or person who is the subject of the grievance who is dissatisfied with a decision of AHCCCS may request an administrative hearing before an administrative law judge, within 30 days of the date of receipt of the decision.

- A. Upon receipt of a request for a hearing, the hearing is scheduled and conducted according to the requirements in A.R.S. §§ 41-1092 et seq.
- B. After the expiration of the timeframes for administrative appeal and administrative hearing as described above, or after the exhaustion of all appeals, the AdSS will take any corrective action required and add to the record a written, dated report of the action taken. A copy of the report will be sent to the AHCCCS OHR for persons in need of Special Assistance.

Miscellaneous Matters Relating to the Grievance Process

- A. In addition to a grievance or request for investigation that may be filed pursuant to this Policy and A.A.C. Title 9, Chapter 21, Article 4, a separate investigation into the death of a person receiving services must be conducted as described in Division Medical Policy Manual, Policy 960.

- B. Grievance Investigation Records: The AdSS must maintain records in the following manner:
1. All documentation received related to the grievance and investigation process must be date-stamped on the day received.
 2. A complete grievance investigation case record must be maintained for each case, and must include:
 - a. The original grievance/investigation request letter and the Appeal or SMI Grievance Form
 - b. Copies of all information generated or obtained during the investigation
 - c. The investigator's report, which will include:
 - A description of the grievance issue
 - Documentation of the investigative process
 - Names of all persons interviewed
 - Written documentation of the interviews
 - Summary of all documents reviewed
 - The investigator's findings, and
 - Conclusions and recommendations.
 - d. A copy of:
 - The acknowledgment letter
 - Final decision letter
 - Corrective action documentation, and
 - Any information/documentation generated by an appeal of the grievance decision.
- C. The AdSS must maintain all grievance and investigation files in a secure designated area and retain for at least five years.
- D. The AdSS must maintain a public log of all grievances or requests for investigation in accordance with A.A.C. R9-21-409(E).
- E. The AdSS must maintain confidentiality and privacy of grievance and investigations records.
- F. Notice must be given to a public official, law enforcement officer, or other person, as

required by law, that an incident involving death, abuse, neglect, or threat to a person receiving services has occurred, or that a dangerous condition or event exists. Refer to AMPM Policy 960.

- G. The AdSS must notify the Deputy Director of AHCCCS, or designee, when: (Refer to AMPM Policy 960)
1. A person receiving services files a complaint with law enforcement alleging criminal conduct against an employee.
 2. An employee or contracted staff files a complaint with law enforcement alleging criminal conduct against a person receiving services.
 3. An employee, contracted staff, or person receiving services is charged or convicted of a crime related to a rights violation, physical or sexual abuse, or death of a person receiving services.