

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

EFFECTIVE DATE: April 29, 2020

REFERENCES: ACOM Policy 444 - Notice and Appeal Requirements (Serious Mental Illness Appeals)

Attachment A - AHCCCS Notice of SMI Grievance and Appeal Procedure

Attachment B - Notice of Legal Rights for Persons with Serious Mental Illness

Attachment C - Notice of Decision and Right to Appeal (for Individuals with an SMI)

Attachment D - Notice of Discrimination Prohibited

This Policy applies to Administrative Services Subcontractors (AdSS). 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.

#### **DEFINITIONS**

- A. Action – The Denial or Limited Authorization of a requested behavioral health service. This includes:
1. Type or level of service;
  2. Reduction, suspension or termination of a previously authorized service;
  3. Denial, in whole or in part, of payment for a service;
  4. Failure to provide covered services in a timely manner;
  5. Failure to act within established timeframes for resolving an Appeal or complaint and providing notice to affected parties; and
  6. Denial of the Title XIX/XXI eligible person's request to obtain covered services outside the network.
- B. Appeal – A request for review of a decision made by the Division, an AdSS, or an AdSS provider.
- C. Denial - 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.
- D. Limited Authorization - A service authorization that falls short of the original request, with respect to the duration, frequency, or type of service requested.
- E. Prior Authorization - 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.

- F. Qualified Clinician - 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.
- G. Reduction of Service - 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.
- H. Suspension of Service - A decision to temporarily stop providing a behavioral health service.
- I. Termination of Service - A decision to stop providing a covered behavioral health service.

## **POLICY**

### A. APPLICABILITY

This policy applies to decisions made by the AdSS or the AdSS subcontracted providers regarding 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.

### B. 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. The time period shall be calculated using calendar days. Weekends and legal holidays are counted in the computation. 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



- b. The AdSS and AdSS' subcontracted providers shall provide a copy of Attachment B (Notice of Legal Rights for Persons with Serious Mental Illness) 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. The AdSS and the AdSS' subcontracted providers shall post Attachment B (Notice of Legal Rights for Persons with Serious Mental Illness), in both English and Spanish, so that it is readily visible to persons visiting the agency.
  - c. The AdSS shall provide Attachment C (Notice of Decision and Right to Appeal (for Individuals with an SMI)) 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. 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 AdSS and AdSS subcontracted provider shall post Attachment D (Notice of Discrimination Prohibited), 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. AdSS Responsibility in appeals
    - i. Upon request, the AdSS and AdSS Subcontracted providers shall provide assistance in explaining the Appeal process or in reducing the Appeal in writing to the appropriate Appeal form.
  - b. 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 The Division 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 the Division, or,
    - iv. A provider acting on the behavioral health recipient's behalf and with the written authorization of the recipient.
6. 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. 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,
    - ii. 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

- iii. 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:
  - 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.
7. 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.
8. Standard Appeal Process
  - a. Within five working days of receipt of an Appeal, the AdSS 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 AdSS refuses to accept a late Appeal or determines that the issue may not be appealed the AdSS shall inform the appellant in writing that he or she may, within 10 days of his/her receipt of the health plan decision, request an Administrative Review of the decision with the Division. 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 the Division of the AdSS's decision as specified in this Policy, The Division shall issue a final decision of within 15 days of the request.
9. Informal Conference with the Contractor
  - a. Within seven days of receipt of an Appeal, the AdSS 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 AdSS shall contact the appellant's advocate, if no advocate has been assigned to the appellant, the AdSS 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 AdSS 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 AdSS 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 the Division for informal conference, and of the procedure for requesting a waiver of the the Division 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 the Division informal conference in writing, the AdSS 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 AdSS to request an administrative hearing on behalf of the appellant and, if so, file the request with the Division 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 the Division Office of Human Rights, and
  - iv. If the appellant fails to attend the informal conference and fails to notify the AdSS of his or her inability to attend prior to the scheduled conference, the AdSS 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 AdSS of his or her inability to attend prior to the rescheduled conference, the AdSS 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 AdSS 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 the Division within three days from the conclusion of the informal conference.

#### 10. Informal Conference

- a. Unless the appellant waives an informal conference with the Division, or the issue on Appeal relates to eligibility for SMI services, the Division shall hold a second informal conference within 15 days of the notification from the AdSS that the Appeal was

unresolved.

- i. At least five days prior to the date of the second informal conference, The Division 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 the Division who shall seek to mediate and resolve the issues in dispute,
- iii. The Division 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, the Division 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, the Division shall send a copy of the informal conference report to the Division Office of Human Rights.
- v. If the issues in dispute are not resolved to the satisfaction of the appellant, the Division 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 the Division 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 the Division Office of Human Rights,
  - 4) In the event the appellant fails to attend the informal conference and fails to notify the Division of his or her inability to attend prior to the scheduled conference, the Division 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, the Division may re-open the Appeal and proceed with the informal conference.

11. Requests for Administrative Hearing

- a. A written request for hearing filed with the Division 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 AdSS, the AdSS shall ensure that the written request for hearing, Appeal case record and all supporting documentation is received by the Division within 3 days from such date, and
- c. Administrative hearings shall be conducted and decided pursuant to A.R.S. §41- 1092 et seq.

12. Expedited Appeals

- a. At the time an Appeal is initiated, the appellant may request an expedited Appeal in writing. The AdSS 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 AdSS 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 AdSS's decision, request an Administrative Review of the AdSS's decision from The Division.
- c. If the appellant requests an Administrative Review on a timely basis, the Division shall complete the review and issue a written decision within one day from the date of receipt. The decision of the Division shall be final.

13. AdSS Expedited Informal Conference
  - a. Within two days of receipt of a written request for an expedited Appeal, the AdSS shall hold an informal conference to mediate and resolve the issues in dispute.
  
14. Division Expedited Informal Conference
  - a. Within two days of notification from the Contractor, the Division 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 the Division to schedule an administrative hearing, or
  - b. If the Divisions 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 the Division to schedule an administrative hearing.