



SALISH BHO

GRIEVANCES AND APPEALS POLICIES AND PROCEDURES

Policy Name: GRIEVANCE, APPEAL, AND FAIR HEARING
GENERAL REQUIREMENTS

Policy Number: 6.01

Reference: 42 CFR 438.400; 42 CFR 438.402; 42 CFR 438.404; 42 CFR 438.406; 42 CFR 438.408; 42 CFR 438.410; 42 CFR 438.414; WAC 388-877-0605; WACs 182-538D-0654 - 0675; RCW 26.28.015; RCW 70.96A.095; RCW 71.34.530; State Grievance and Appeal System Instructions and Reporting Guidelines; PIHP and BHSC Contract

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Approved by: SBHO Executive Board

CROSS REFERENCES

- Form: Grievance Reporting Form
- Policy: Appeal Process
- Policy: Grievances
- Policy: Corrective Action Plans
- Policy: Fair Hearing
- Policy: Notice Of Adverse Benefit Determination Requirements
- Policy: Grievance Oversight and Recordkeeping

PURPOSE

It is the policy of the Salish Behavioral Health Organization (SBHO) to establish a process for both Medicaid individuals and state funded individuals to pursue grievances and appeals, and access Fair Hearings.

This policy is designed to allow individuals and/or advocates/representatives the opportunity to have grievances heard in a uniform manner and resolved in a timely fashion.

The SBHO policy will outline the rights, responsibilities and requirements of the SBHO, individuals, providers, and other involved parties at all levels of the grievance, appeal, and fair hearing system.

This policy applies to Medicaid individuals and state funded individuals receiving services paid for by the SBHO. The SBHO is the Pre-Paid Inpatient Health Plan (PIHP).

DEFINITIONS

Adverse Benefit Determination (ABD) means, in the case of a behavioral health organization (BHO):

- The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit.
- The reduction, suspension, or termination of a previously authorized service;
- The denial in whole or in part, of payment for a service;
- The failure to provide services in a timely manner, as defined by the state; or
- The failure of a BHO to act within the grievance system timeframes as provided in WAC 182-538D-0660 through 182-538D-0670.

Agency means any SBHO contracted network community behavioral health agency licensed to provide behavioral health services covered in the SBHO contracts (PIHP and BHSC).

Appeal means a review by the SBHO of an adverse benefit determination. See also "expedited appeal."

Behavioral Health Care Provider means an individual with primary responsibility for implementing an individualized service plan for behavioral health services.

Enrollee means a Medicaid recipient who is enrolled in a Pre-Paid Inpatient Health Plan.

Expedited Appeal allows an individual, in certain circumstances, to file an appeal that will be reviewed by the SBHO more quickly than a standard appeal.

Fair (also known as Administrative) Hearing means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about adverse benefit determinations or a decision of a BHO to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

Grievance means an expression of dissatisfaction about any matter other than an adverse benefit determination (ABD). Grievances may include, but are not limited to, an individual's right to dispute an extension of time proposed by the SBHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the individual's rights regardless of whether a specific action is requested by the individual.

Filing grievances should be a common standard practice at the provider agency and SBHO level; and not described to individuals in any way that discourages the process. It is expected that the network provider agencies and SBHO will encourage and support an individual using the formalized grievance system.

Grievance and Appeal system means the processes the SBHO implements to handle appeals of ABDs and grievances as well as the processes to collect and track information about them, meeting the requirements of 42 CFR Section 438, Subpart F.

Individual (expanded definition for grievances): According to WAC 182-538D--0655, an individual means a person who applies for, is eligible for, or receives SBHO-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. *For the purposes of accessing the grievance and appeal system and the fair hearing process, when another person is acting on an individual's behalf, the definition of individual also includes any of the following:*

- a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;
- b) The individual's legal guardian;
- c) The individual's representative if the individual gives written consent;
- d) The individual's behavioral health provider if the individual gives written consent, except that the behavioral health provider cannot request continuation of benefits on the individual's behalf.

In the case of minors, a parent or legal guardian has the rights of an individual, including the right to file a grievance (i.e. to take a legal action) on behalf of the minor until the age of 18. (RCW 26.28.015)

However, per Washington State law, the age of consent for both substance use and mental health treatment is age 13. (RCW 70.96A.095, RCW 71.34.530) Youth who are 13 and older have the right to the confidentiality of their behavioral health information. If the youth is 13 or older, a parent may file a grievance. The SBHO or Behavioral Health Agency (BHA) should accept and acknowledge the parent's grievance. The response to the parent(s) should state that due to confidentiality restrictions, the SBHO or BHA can neither confirm nor deny the identity of the patient and the fact of treatment. A consent to release information form should be provided by the SBHO or BHA. Appropriate efforts should be made to seek consent from the minor. If the minor over age 13 provides consent, the grievance process may proceed to resolution. If consent of the minor is not obtained, the grievance will be closed as not pursued.

Note that should the grievance not be pursued due to the limits of confidentiality, best practice should prompt the SBHO or BHA to consider the parent(s)' complaint in a manner similar to that of a general community member who wants to voice a concern about a program or services. This way the information can be used to improve services or operations, but handled in a way that protects confidentiality.

- The definition of an individual does not include parents of adult children, other family members, or any other individual unless they are an authorized representative.

Notice of Adverse Benefit Determination is a written notice the SBHO, typically via the ASO, provided to an individual to communicate an adverse benefit determination.

Notice of Determination means a written notice that must be provided to an individual to communicate denial or limited authorization of a nonmedicaid service offered by the SBHO. A notice of determination must contain the following:

- a) The reason for denial or offering of alternative services;
- b) A description of alternative services, if available; and
- c) The right to request a fair hearing, how to request a hearing, and the timeframes for requesting a hearing as identified in WAC 182-538D-0675.

PROCEDURE

1. The SBHO values the resolution of grievances and appeals at the local/lowest possible level, in a confidential manner, and without retaliation.
 - There will be no retaliation or punitive action of any kind against an individual who initiates a grievance, appeal, or request for fair hearing.
 - There will be no retaliation against a provider, or providers, that initiate a grievance or appeal on behalf of an individual.
2. All offered resolutions to grievances honor individual voice, choice, culture, and rights of and on behalf of the individual filing the dissatisfaction. At all stages of the process, emphasis shall be placed on an individual-defined solution.
 - Resolutions will consider the most effective clinical practices, cultural competency, Access to Care Standards, medical necessity, laws, and federal, state, and contractual requirements.
3. Individuals, with assistance from designated representatives, may initiate and pursue a grievance, appeal, and under certain circumstances, a fair hearing.
 - Grievances can be filed orally or in writing. A grievance form is provided as an option to assist in defining the issue(s) of concern and requested resolution (P&P 6.02a).
 - Appeals can be filed either orally or in writing. A written, signed request must be submitted unless an expedited appeal is requested. The oral filing must be used to establish the earliest filing date.
 - During appeals for Medicaid individuals, previously authorized services may continue or be reinstated under certain circumstances.
 - When appeals are not resolved wholly in favor of the individual, under certain circumstances they may be asked to pay for these services.
 - Filed grievances and appeals will be investigated even if the individual is no longer receiving services.

4. The SBHO will ensure that individuals are made aware that at any point in the grievance or appeal process they may utilize an advocate or representative to assist them (with written consent), such as:
 - A community behavioral health agency, acting on behalf of the individual and with the individual's written consent, may file an appeal, or
 - A community behavioral health agency may file a grievance, appeal, or request a fair hearing on behalf of an individual and act as the individual's authorized representative.
- At a minimum, Ombuds services will be offered at all levels of the process.
- Reasonable assistance shall be provided in completing forms and taking other procedural steps. This may include providing interpreter services and toll-free numbers that have adequate TTY/TTD capability.
5. Individuals may request an appeal of an adverse benefit determination by the SBHO or its formal designee. Non-WISe appeals are pursued via CommCare, the SBHO's Administrative Services Organization (ASO).

Individuals will receive a written notice of adverse benefit determination that outlines their rights to appeal adverse benefit determinations including service determination or authorization by the SBHO designee, CommCare, and the process to appeal these adverse benefit determinations with the SBHO or its formal designee.

- Outpatient and inpatient adverse benefit determinations, for Medicaid individuals, can be pursued through the appeal process.
6. A request for a Fair Hearing may be made by an individual, or their designated representative, if they are dissatisfied with the SBHO resolution of an appeal.
 7. The SBHO informs individuals of their rights to initiate a grievance, appeal (including expedited appeal), and fair hearing through distributing published and electronic state Benefit Booklets, SBHO brochures, Ombuds materials, SBHO handbooks, and SBHO standardized individual rights forms with readily understandable language.

The state Benefit Booklet is made available to Medicaid recipients by the state annually.

The SBHO brochures are available in public areas at network provider agencies, posted on the SBHO website, and mailed upon request. The SBHO handbook is mailed to all individuals authorized and re-authorized for care within the network, at least annually.

The SBHO standardized client rights form is provided along with consent for treatment and grievance information. The rights are also listed in the state Benefits booklet, Ombuds brochure, and SBHO brochure and handbook.

- This information shall be made available to all current and potential users of publicly funded behavioral health services and representatives, in language that is clear and easily understood to the individual.

The individual filing the grievance or appeal (or their designated representative) may examine their case file, including medical records, documents and records considered at any time before and during the grievance appeal process.

8. The SBHO, network providers, and subcontractors will cooperate with and promptly abide by all grievance, appeal, and Fair Hearing decisions. The SBHO will require this in contracts and will monitor compliance with this requirement through the annual administrative review process.
9. The SBHO and network providers maintain records of grievances, appeals, and Fair Hearings. All records will be retained for ten (10) years following a resolution.
 - All records of grievances, appeals, and Fair Hearings will be kept confidential and separate from clinical records. These records will not be disclosed without the individual's written authorization, except as necessary, in the following circumstances:
 - i. to resolve the issue(s) of concern
 - ii. to the state if a Fair Hearing is requested
 - iii. or for review as part of the quality improvement or state quality strategy
10. Should the SBHO Grievance Manager not be available to investigate and resolve a grievance, the SBHO Compliance Manager will be the designated grievance back-up and will follow the necessary grievance timelines as indicated in these Policies and Procedures.
 - The trigger for the Compliance Manager to assume Grievance Manager duties is an absence by the Grievance Manager of four business days or more. This ensures there will be no delay in sending out the acknowledgement letter for any new grievance received during this time.
 - All planned absences of four business days or longer will necessitate advanced notification by the Grievance Manager to the Compliance Manager of said planned absence and the need to assume Grievance Manager duties.
 - Should there be an unplanned, extended period of leave by the Grievance Manager, the Compliance Manager should assume oversight responsibility of the grievance system and ensure all pending investigations are resolved with a sent resolution letter before the 90-day timeline expires.
 - The Compliance Officer will also assume Grievance duties whenever the Grievance Manger is unable to investigate a grievance due to having been involved in prior decision-making regarding the content of the grievance.

MONITORING

1. This policy will be monitored through SBHO:
 - Ongoing oversight of all SBHO grievance letters sent by network providers
 - Annual network provider and subcontractor administrative reviews
 - Review and approval of network providers grievance policies
 - SBHO Trainings
 - SBHO Grievance Tracking Reports. Information about individual grievances, appeals, or Fair Hearings that have system wide implications may be used for quality improvement.
 - Quality Management Plan activities, such as standard review of the Grievance Tracking forms and report, analysis of targeted trends and system recommendations. Information about types of agency or SBHO grievances, SBHO appeals, Fair Hearing requests, and denials will be used to analyze patterns or trends and identify areas for quality improvement.

2. If a provider/contractor performs below expected standards during any of the reviews listed above a Corrective Action Plan may be required for SBHO approval.