



## SALISH BHO

### GRIEVANCES AND APPEALS POLICIES AND PROCEDURES

**Policy Name:** APPEAL PROCESS

**Policy Number:** 6.03

**Reference:** 42 CFR 431.230; 42 CFR 438.400; 42 CFR 438.402; 42 CFR 438.406; 42 CFR 438.408; 42 CFR 438.410; 42 CFR 438.420; 42 CFR 438.424; WAC 182-538D-0654 through 182-538D-0675; State Grievance and Appeal System Instructions and Reporting Guidelines; PIHP and BHSC contract; WISe Manual v.1.7

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**Approved by:** SBHO Executive Board

#### CROSS REFERENCES

- Policy: Grievance, Appeal, and Fair Hearing General Requirements
- Policy: Grievances
- Policy: Fair Hearing
- Policy: Grievance Oversight and Recordkeeping
- Policy: Notice of Adverse Benefit Determination Requirements
- Policy: Corrective Action Plans

#### PURPOSE

It is the policy of the Salish Behavioral Health Organization (SBHO) to establish a standardized, single level appeal process regarding adverse benefit determinations for Medicaid authorization decisions. This policy is designed to outline a uniform and timely procedure for SBHO appeal process and expedited appeal requirements. The SBHO is the Pre-Paid Inpatient Health Plan (PIHP).

The SBHO subcontracted Administrative Service Organization (ASO), CommCare, is responsible for handling the SBHO non-WISe (*Wraparound with Intensive Services*) appeals process - standard and expedited. The SBHO is responsible for overseeing, is accountable for, and monitors the functions and determinations resulting from the ASO appeal process, for all programs and services. The SBHO is directly responsible for all WISe appeals.

The ASO may adopt more expansive definitions and procedures to ensure individuals receive more information and notification than required in this policy. The ASO procedure shall adhere to Utilization Review Accreditation Commission/ National Committee for Quality Assurance (URAC/NCQA) standards.

## DEFINITIONS

Adverse Benefit Determination (ABD) means, in the case of the SBHO:

- 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.

Appeal means a review by the SBHO or its subcontracted ASO of an adverse benefit determination.

Appeal Process is one of the processes included in the grievance system that allows an individual, their legal guardian, or the individual's authorized representative, a provider, or a BHA acting on behalf of the individual and with the individual's written consent, to appeal an ABD made by the SBHO and communicated on a Notice of Adverse Benefit Determination (NOABD).

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.

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.

Parties to the appeal, as applicable, may include:

- The individual, the individual's representative, or both; or
- The legal representative of a deceased individual's estate.

WISe is a range of Medicaid-funded service components that are individualized, intensive, coordinated, comprehensive, culturally relevant, and home and community based. WISe is for youth who are experiencing mental health symptoms that disrupt or interfere with their functioning with the family, school, or with peers.

## PROCEDURE

1. Individuals may file an appeal to ask the SBHO to review an ABD the SBHO has communicated on a written NOABD (please see P&P 6.05 for NOABD specifics). If a written NOABD was not received, an appeal may still be filed. They may also ask for an expedited appeal if specific criteria are met (see “Expedited Appeals” below).
2. An individual or their legal guardian will receive a written NOABD prepared by the SBHO subcontracted ASO when an adverse benefit determination is made.
  - a. SBHO network mental health providers requesting services on behalf of the individual will also receive notice through their Electronic Health Record.
  - b. SBHO network substance use disorder providers requesting services on behalf of the individual will receive notice via secure email.
  - c. For denials of inpatient authorization or extension requests, the inpatient provider will receive a written NOABD.
3. Individuals requesting a review of an ABD:
  - a. Must file an appeal and receive a notice of resolution from the SBHO’s ASO before requesting a Fair Hearing.
  - b. May not file a grievance with the BHA or the SBHO for the same issue as the appeal once an appeal has been filed.
4. The appeals process must:
  - a. Provide the individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The SBHO or ASO must inform the individual of the limited time available during an expedited appeal process.
  - b. Provide the individual the opportunity, free of charge, and sufficiently in advance, to examine the individual’s clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.
  - c. At the individual’s request, give the individual reasonable assistance in taking any procedural steps.
5. Individuals should be informed about Ombuds services for assistance and how to access these services.
  - a. Ombuds services are available to provide advocacy, assistance, and investigation throughout the appeals process. Ombuds services work to assist individual with the standard and expedited appeals process listed below.
6. The SBHO will ensure persons who make decisions on appeals:
  - a. Were not involved in any previous level of review or decision-making nor a subordinate of any person who reviewed or decided on a previous level of review or decision-making;

- b. Are mental health professionals or chemical dependency professionals who have appropriate clinical expertise if deciding an appeal of an ABD concerning medical necessity or an appeal that involves any clinical issues;
  - c. Consider all comments, documents, records, and other information submitted by the individual regardless of whether the information was considered in the initial decision.
7. Individuals may initiate a standard or expedited appeal orally or in writing.
  - a. Oral requests for standard appeals must be followed up with a signed written request by the individual.
  - b. Requests for expedited appeals are not expected to be followed with a written request.
8. The SBHO subcontracted ASO will document the appeal, including the date of receipt, actions taken, resolution offered, and date of notification to the individual.
9. Written requests for appeals should include the name, address, how the SBHO can best contact the individual, reasons for appealing, and any evidence that individual or representatives wish to attach. The individual may send supporting records, letters from their behavioral health provider, a list identifying qualified witnesses, or other information that explains services should be provided. Individuals may request information from their behavioral health provider.
  - The investigation may begin prior to receipt of the written appeal and signed request form.
10. For WISE appeals, individuals may file an appeal as indicated above to ask the SBHO to review an ABD the SBHO has communicated on a written NOABD (please see P&P 6.05 for NOABD specifics). If a written NOABD was not received, an appeal may still be filed. They may also ask for an expedited appeal if specific criteria are met (see “Expedited Appeals” below). Individuals will request a standard appeal or expedited appeal following the same procedures as above; however, the SBHO will review all WISE requests for appeals.

### Standard Appeal Process

1. For standard appeals for ABDs when **continued services are *not* requested**:

An individual who disagrees with a decision communicated on an NOABD may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The SBHO or ASO will use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

- a. The individual must file the appeal within sixty (60) calendar days from the date on the notice of ABD.

- b. The SBHO or ASO will confirm receipt of the appeal in writing within five (5) business days.
  - c. The SBHO or ASO will send the individual a written notice of the resolution within thirty (30) calendar days of receiving the appeal. This timeframe may be extended up to fourteen (14) additional calendar days if the individual requests an extension or the SBHO is able to demonstrate to the state upon the state's request that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution shall include:
    - I. The decision on the appeal and the date of decision;
    - II. The reason for the decision;
    - III. The right to request a Fair Hearing if the individual disagrees with the decision and include the following timeframes to make the request:
      - (i) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services to be continued pending the outcome of the hearing;
      - (ii) Within 120 calendar days from the date on the notice of the resolution if the individual is not asking that services to be continued pending the outcome of the hearing;
    - IV. Reference to the plan provision or clinical criteria on which the decision is based;
    - V. Notice that the specific criteria and copies of materials reviewed can be provided free of charge, upon request;
    - VI. Information regarding the support(s) available if there is any concern of retaliation; and
    - VII. Be provided in the prevalent non-English languages as described in the Information Requirements section of the PIHP contract and meet the language and format requirements identified in 42 CFR 438.10(d).
2. For standard appeals for termination, suspension, or reduction of previously authorized services and **continued services are requested**.

An individual receiving a NOABD from the SBHO for WISE services, or subcontracted ASO for all non-WISE related services that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the decision on the appeal. For appeals related to WISE services, the SBHO will use the date of an oral appeals as the official filing date to establish the earliest possible filing date. For all other appeals, the ASO will use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All the following apply:

- a. The individual must:
  - I. File the appeal with the SBHO's subcontracted ASO on or before the later of the following:
    - 1) Within ten (10) calendar days of the date on the NOABD; or
    - 2) The intended effective date of the proposed ABD.

- II. For all WISe service appeals, file the appeal with the SBHO on or before the later of the following:
  - 1) Within ten (10) calendar days of the date on the NOABD; or
  - 2) The intended effective date of the proposed ABD.
- II. Request continuation of services.
- b. The SBHO or ASO will:
  - I. Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five (5) business days;
  - II. Send a notice in writing that follows up on any oral confirmation made; and
  - III. Include in the notice that if the appeal decision is not in favor of the individual, the SBHO may recover the cost of the behavioral health services provided pending the decision.
- d. The SBHO or ASO will send the individual a written notice of the resolution within thirty (30) calendar days of receiving the appeal. This timeframe may be extended up to fourteen (14) additional calendar days if the individual requests an extension or the SBHO is able to demonstrate to the state upon the state's request that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution shall include:
  - I. The decision on the appeal and the date of decision;
  - II. The reason for the decision;
  - III. The right to request a Fair Hearing if the individual disagrees with the decision and include the following timeframes:
    - (i) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services to be continued pending the outcome of the hearing;
    - (ii) Within 120 calendar days from the date on the notice of the resolution if the individual is not asking that services to be continued pending the outcome of the hearing;
  - IV. Reference to the plan provision or clinical criteria on which the decision is based;
  - V. Notice that the specific criteria and copies of materials reviewed can be provided free of charge, upon request;
  - VI. Information regarding the support(s) available if there is any concern of retaliation; and
  - VII. Be provided in the prevalent non-English languages as described in the Information Requirements section of the PIHP contract and meet the language and format requirements identified in 42 CFR 438.10(d).

### Expedited Appeal Process

1. Expedited appeals may be requested when the individual, provider or other representative believe that taking the time for a standard resolution could seriously

jeopardize the individual's life, behavioral health, or ability to attain, maintain, or regain maximum functioning.

2. The expedited appeal process shall meet the additional requirements listed below:
  - i. Requests for expedited resolution may be initiated orally and are not required to be followed by a written signed request by the individual or representative.
  - ii. The appeal must be filed within ten (10) calendar days from the date on the ASO written NOABD, or SBHO written NOABD for WISE services, that communicated the ABD if the individual is not requesting continue benefits.
  - iii. The ASO will confirm receipt of the request for an expedited appeal in person or by telephone. In the event of an expedited appeal related to WISE services, the SBHO will confirm receipt of the request for an expedited appeal in person or by telephone.
  - iv. The ASO, or SBHO for WISE expedited appeals, will make a decision on the individual's request for expedited appeal and provide notice, as expeditiously as the individual's behavioral health condition requires, within seventy-two (72) calendar hours or sooner based on the medical necessity of the individual. The ASO, and SBHO for WISE expedited appeals, will also make reasonable efforts to provide oral notice.
  - v. The SBHO ASO may extend seventy-two (72) calendar hours' timeframe by up to fourteen (14) calendar days if:
    - The individual or provider acting on behalf of the individual requests the extension and there is written agreement, or
    - If the SBHO ASO can demonstrate it needs additional information and that the added time is in the best interest of the individual. The SBHO will give the individual written notice of the reason for the delay.
    - For WISE expedited appeals, the SBHO may extend seventy-two (72) calendar hours' timeframe by up to fourteen (14) calendar days if the above criteria exist.

The SBHO ASO will provide the individual a reasonable opportunity to present evidence, and allegations of fact, in person (via video teleconference) as well as in writing and inform the individual of the limited time available for expedited resolution.

The SBHO ASO will ensure that retaliation or punitive action is not taken against an individual or provider who requests an expedited resolution or supports an individual's appeal.

If the SBHO ASO denies a request for an expedited resolution of an appeal, it will transfer the appeal to the timeframe for a standard resolution; and make reasonable efforts to give individual prompt oral notice of the denial, followed up within two (2) calendar days with a written notice, and inform the individual of their right to file a grievance regarding the denial of expediency.

For WISE expedited appeal requests, the SBHO will provide the individual a reasonable opportunity to present evidence, and allegations of fact, in person (via video teleconference) as well as in writing and inform the individual of the limited time available for expedited resolution.

The SBHO will ensure that retaliation or punitive action is not taken against an individual or provider who requests an expedited resolution or supports an individual's appeal.

If the SBHO denies a request for an expedited resolution of an appeal, it will transfer the appeal to the timeframe for a standard resolution; and make reasonable efforts to give individual prompt oral notice of the denial, followed up within two (2) calendar days with a written notice, and inform the individual of their right to file a grievance regarding the denial of expediency.

### Continuation of Services during the Appeal Process

The SBHO will continue the individual's services/benefits if all of the following apply:

1. The individual or the provider files the appeal on or before the later of the following:
  - Within ten (10) calendar days of receipt of the SBHO notice, which for ABDs involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three (3) calendar days of the intended effective date of the ASO or SBHO for WISE services, proposed ABD
  - The intended effective date of the proposed ABD
2. The appeal involves the denial or requested services, termination, suspension, or reduction of a previously authorized course of treatment.
3. Services were requested by an authorized community behavioral health agency
4. The individual requests a continuation of services and benefits, and
5. The original period covered by the original authorization has not expired at the time of the request for continuation of benefits.

The ASO will confirm receipt of the request for continued services with the individual orally or in writing within five (5) business days. If confirmation is made orally the ASO will send a follow up notice of the confirmation in writing. For continuation of WISE services during the appeal process, the SBHO will confirm receipt of the request for continued services with the individual orally or in writing within five (5) business days. If confirmation is made orally, the SBHO will send a follow up notice of the confirmation in writing.

If, at the individual's request, the ASO or SBHO for WISE services, continues and reinstates the individual's services while the appeal is pending, the services must be continued until one of the following occurs:

1. The individual withdraws the appeal, or



2. The ASO or SBHO for WISE related services, provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request a Fair Hearing within ten days from the date the BHO mails the notice, or
3. The time period of a previously authorized service has expired, or
4. A behavioral health treatment service limit of a previously authorized service has been fulfilled, or
5. The Office of Administrative Hearings issues a Fair Hearing decision adverse to the individual.

Individuals who request continuation of benefits will be notified that if the final resolution of the appeal is averse to the individual, the SBHO may request the individual to reimburse the cost of the services furnished to the individual while the appeal was pending.

If the SBHO fails to meet the timelines concerning any appeal, they will provide the services that are the subject of the appeal. The SBHO will pay the community behavioral health agency to provide these services.

#### Effects of Reversed Resolutions of Appeals

1. If the SBHO for WISE services, the SBHO ASO or the state Administrative Hearing Office reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the SBHO ASO must authorize, and the community behavioral health agency must provide, the disputed services promptly, as expeditiously as the individual's behavioral health condition requires. For WISE related reversed resolutions, the SBHO must authorize, and the community behavioral health agency must provide, the disputed services promptly, as expeditiously as the individual's behavioral health condition requires.
2. If the SBHO for WISE services, the SBHO ASO or the state Administrative Hearing Office reverses a decision to deny authorization of services, and the individual received the disputed services while the appeal was pending, the SBHO must pay for those services.
3. If the final resolution of the appeal upholds the ABD, the SBHO may recover the amount paid for the services provided to the individual while the appeal was pending, to the extent that they were provided solely because of the requirement for the continuation of services and in accordance with 42 CFR 431.230.

#### Oversight of Appeal Process

The SBHO is responsible for overseeing, is accountable for, and monitors the functions and determinations resulting from the SBHO and ASO appeal process. The SBHO provides direct oversight for each appeal, at the time of the appeal, and the overall process during the administrative review, to include WISE appeals.

The SBHO must maintain full records of all appeals. Appeals are tracked by the ASO in the Authorization Tracking Log and by the SBHO on the Appeals section of the Log All spreadsheet. The SBHO will ensure an individual's records are:

- Kept for ten years after the completion of the appeal process;
- Made available to the state upon request as part of the state quality strategy;
- Kept in confidential files separate from the individual's clinical record; and
- Not disclosed without the individual's written permission, except to the state or as necessary to resolve the appeal.

## **MONITORING**

This policy is a federal statute and contract mandate.

1. The SBHO Appeals policy and procedures are routinely monitored through:
  - 100% SBHO review of all appeals
  - SBHO Authorization Tracking Log provided by CommCare
  - Annual SBHO Provider and Subcontractor Administrative Review
  - SBHO Appeal Tracking Log
  - Quality Management Plan activities
2. If a provider/contractor performs below expected standards during any of the reviews listed above a Corrective Action may be required for SBHO approval.