



Section 5.4 Special Assistance for Persons Determined to have a Serious Mental Illness (SMI)

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I. STATEMENT OF PURPOSE:

Persons who have been determined to have a Serious Mental Illness (SMI) have specific rights, remedies and protections in accordance with Arizona law. These include the right to self-determination, freedom of choice, and the right to participate to the fullest extent possible in all phases of their treatment.

Individual service planning and inpatient treatment/discharge planning are fundamental aspects of an individual's comprehensive treatment. The appeal and grievance/investigation processes are the primary mechanisms which preserve and enforce the rights of individuals determined to have an SMI. In some instances, persons determined to have an SMI may have other conditions that can affect their ability to participate effectively in these processes. The Tribal or Regional Behavioral Health Authorities (TRBHAs) and subcontracted providers are required to identify those persons in need of Special Assistance and facilitate the provision of Special Assistance. It is critically important that TRBHAs and subcontracted providers regularly screen and identify persons who have been determined to have an SMI, who are also unable to communicate and/or participate effectively. TRBHAs and providers must ensure that the person designated to provide Special Assistance is involved at key stages.

II. REFERENCES:

The following Pascua Yaqui (PY) Centered Spirit Program (CSP) Provider Manual sections can serve as additional resources for this content area:

- Section 3.10, SMI Eligibility Determination*
- Section 3.9, Assessment and Service Planning*
- Section 4.1, Disclosure of Behavioral Health Information*



The following citations and AHCCCS document also serve as resources for this content area:

A.R.S. §§ 14-5303, 14-5304, 14-5305

A.R.S. §§ 36-501, 36-504, 36-509, 36-517.01

A.R.S. §§ 41-3803, 41-3804

9 A.A.C. 21

AHCCCS/TRBHA Intergovernmental Agreement (IGA) 2021

III. **STANDARDS:**

The intent of this standard is to identify the need for special assistance for persons who have been determined to have a serious mental illness and to refer such persons to the TRBHA, Office of Human Rights and appropriate Human Rights committee.

A person determined to have an SMI who is also subject to a general guardianship automatically meets the criteria for Special Assistance.

The Office of Human Rights can designate a family member, friend, guardian or qualified advocate as the person meeting the needs of a person in need of Special Assistance.

Until the person designated to provide the person's Special Assistance needs is actively involved, the TRBHA and behavioral health provider are required to postpone service and discharge planning, and/or the grievance, investigation and appeal processes.

"Special needs" are separate from the need for Special Assistance. Persons with special needs can include those who do not speak English, and may need an interpreter; persons who are deaf or hard of hearing and require auditory assistance; and persons who are blind or physically disabled, who may require visual or mobility assistance. TRBHAs and providers are required to make the appropriate accommodations for special needs.

IV. **PROCEDURES:**

A. Criteria for identifying the need for Special Assistance:

A person who has been determined to have an SMI is in need of Special Assistance if he or she is unable to do any of the following:

1. Communicate preferences for services;
2. Participate effectively in individual service planning (ISP) or inpatient treatment discharge planning (ITDP); or
3. Participate effectively in the appeal, grievance, or investigation processes;



And the person's limitations are due to any of the following:

1. Cognitive ability/intellectual capacity (such as cognitive impairment, borderline intellectual functioning, or diminished intellectual capacity);
2. Language barrier (an inability to communicate, other than the need for an interpreter/translator); or
3. Medical condition (including, but not limited to traumatic brain injury, dementia or severe psychiatric symptoms).

A person who is subject to a general guardianship has been found to be incapacitated under A.R.S. § 14-5304 and therefore automatically satisfies the criteria for Special Assistance. Similarly, if a TRBHA or subcontracted provider *recommends* a person with an SMI for a general guardianship or a guardianship is in the legal process (in accordance with R9-21-206 and A.R.S. § 14-5305), the person automatically satisfies the criteria for Special Assistance.

The existence of any of the following circumstances for an individual should prompt the TRBHA and subcontracted provider to more closely review the individual's need for Special Assistance:

1. Developmental disability involving cognitive ability;
2. Residence in a 24-hour setting;
3. Limited guardianship or the TRBHA or subcontracted provider is recommending and/or pursuing the establishment of a limited guardianship; or
4. Existence of a serious medical condition that affects his/her intellectual and/or cognitive functioning (such as dementia, traumatic brain injury (TBI), etc.).

B. Persons qualified to make a Special Assistance Determination:

The following may deem a person to be in need of Special Assistance:

1. A qualified clinician providing treatment to the person;
2. A case manager of a TRBHA or subcontracted provider
3. A clinical team of a TRBHA or subcontracted provider;
4. A TRBHA;
5. A program director of a subcontracted provider; including Arizona State Hospital (AzSH);
6. The Deputy Director of AHCCCS; or



7. A hearing officer assigned to an appeal involving a person determined to have an SMI.

C. When to screen for Special Assistance:

TRBHAs and their subcontracted providers must on an ongoing basis screen whether persons determined to have an SMI are in need of Special Assistance. For persons who are also Title XIX enrolled. Minimally this assessment must occur at the following stages:

1. Assessment and annual updates;
2. Development of or update to the Individual Service Plan (ISP);
3. Upon admission to a psychiatric inpatient facility;
4. Development of or update to the Inpatient Treatment and Discharge Plan (ITDP);
5. Initiation of the grievance or investigation processes;
6. Filing of an appeal; and
7. Existence of a condition which may be a basis for a grievance, investigation or an appeal, and/or the person's dissatisfaction with a situation that could be addressed by one or more of these processes.

For persons with an SMI who are not Title XIX-enrolled, TRBHAs, ASH and subcontracted providers are required to assess whether the person is in need of Special Assistance:

- Upon admission to the AzSH and periodically during the person's stay;
- Initiation of the grievance or investigation processes; and
- Filing of an appeal.

TRBHAs and their subcontracted providers shall document in the clinical record each time a person is screened for Special Assistance, indicating what factors were considered and the conclusion reached. If it is determined that the person is in need of Special Assistance, they must notify the Office of Human Rights (OHR) by completing *PM Form 5.4.1 Notification of Persons in Need of Special Assistance* in accordance with the procedures outlined below.

Before submitting *PM Form 5.4.1*, TRBHAs and their subcontracted providers shall check if the person is already identified as in need of Special Assistance. A notation of Special Assistance designation and a completed *PM Form 5.4.1* (two



pages) should already exist in the clinical record. However, if it is unclear, subcontracted providers must review TRBHA data or contact the TRBHA to inquire about current status. TRBHAs are required to maintain a database on persons in need of Special Assistance and share data with subcontracted providers on a regular basis, at a minimum quarterly.

D. Notifying the Office of Human Rights:

If the person is not correctly identified as Special Assistance, the TRBHAs and subcontracted providers must notify the Office of Human Rights (OHR) using *PM Form 5.4.1 Notification of Person in Need of Special Assistance (Part A)*, within five working days of identifying a person in need of Special Assistance. If the person's Special Assistance needs require immediate assistance, the notification form must be submitted immediately, with a notation indicating the urgency. If the person is under a guardianship or one is in process, the documentation of such must also be submitted to OHR. However, if the documentation is not available at the time of submission of the *PM Form 5.4.1* notification, the form should be submitted within the required timeframes, followed by submittal of the guardianship documentation.

The OHR will review the notification form to confirm that a complete description of the necessary criteria is included. In the event necessary information is not provided, OHR will contact the TRBHA to obtain clarification. OHR will respond to the TRBHA and subcontracted provider by completing *PM Form 5.4.1 (Part B)*, within five working days of receipt of notification from the TRBHA. The notification process is complete only when OHR returns the form, with *Part B* completed, to the TRBHAs and subcontracted providers. If *PM Form 5.4.1 (Part B)* is not received within the required time period, the TRBHAs and providers should follow up by contacting OHR at (602) 354-4585.

If the need for Special Assistance is urgent, OHR will respond as soon as possible, but generally within one working day of receipt of the notification form.

The notification process is complete only when OHR returns the form, with Part B completed, to the TRBHAs and subcontracted providers. The TRBHAs and subcontracted providers should follow up with OHR if no contact is made or Part B is not received within five working days.

Designation of the Agency/Person Providing Special Assistance

OHR designates which agency/person will provide Special Assistance when processing a *PM 5.4.1* notification form. When the agency/person providing Special Assistance changes, OHR processes an "updated Part B" to document the change.

If the person or agency currently identified as providing Special Assistance is no longer actively involved, the TRBHAs or subcontracted providers must notify



OHR. If an OHR advocate is also assigned, notification to the advocate is sufficient.

E. No longer in need of Special Assistance:

The TRBHAs or subcontracted providers must notify the OHR within ten days of an event or a determination that an individual is no longer in need of Special Assistance using *Part C* of the original notification form, identifying:

1. The reasons why Special Assistance is no longer required;
2. The effective date;
3. The name and title of the staff person completing the form; and
4. The date the form is completed.

The following are instances that should prompt TRBHAs or subcontracted providers to submit a *Part C*:

- The original basis for the person meeting Special Assistance criteria is no longer applicable and the person does not otherwise meet criteria;
- TRBHA or subcontracted provider must first discuss the determination with the person or agency providing Special Assistance to obtain any relevant input;
- This includes when a person is determined to no longer be a person with an SMI (proper notice and appeal rights must be provided and the time period to appeal must have expired);
- The person passes away;
- The person's episode of care is ended with the TRBHA (Non-Title XIX persons with an SMI will also be disenrolled) and the person is not transferred to another TRBHA.¹ The TRBHAs or subcontracted providers must first perform all required re-engagement efforts, which includes contacting the person providing Special Assistance, per *Section 3.8 Outreach, Engagement, Re-engagement and Closure* and proper notice

¹ *Submission of a Part C is **not** needed when a person transfers to another TRBHA, as the Special Assistance designation follows the person.



and appeal rights must be provided and the time period to appeal must have expired);

- Upon receipt of *Part C* of the *PM Form 5.4.1*, OHR administration review content to confirm accuracy and completeness and send it back to the agency that submitted it, copying any involved TRBHA or subcontracted provider.

F. Requirements of TRBHAs and subcontracted providers to help ensure the provision of Special Assistance:

TRBHAs and subcontracted providers must maintain open communication with the person/agency (guardian, family member, friend, OHR advocate, etc.) assigned to meet the person's Special Assistance needs. Minimally, this involves providing timely notification to the person providing Special Assistance to ensure involvement in the following stages:

1. ISP planning and review:
 - a. Including any instance when the person makes a decision about service options and/or denial/modification/termination of services; (service options include not only a specific service but also potential changes to provider, site, doctor and case manager assignment);
 - b. ISP development and updates must be in accordance with *Section 3.9 Assessments and Service Planning*;
2. ITDP planning:
 - a. Which includes any time the person is admitted to a psychiatric inpatient facility and involvement throughout the stay and discharge;
 - b. Appeal process: this includes circumstances that may warrant the filing of an appeal, so all Notices of Action (NOAs) or Notices of Decisions (NODs) issued to the person/guardian must also be copied to the person designated to meet Special Assistance needs; and
 - c. Investigation or grievance process including circumstances when initiating a request for investigation/grievance may be warranted.

TRBHAs, AzSH and subcontracted providers must maintain open communication with the person assigned to meet the Special Assistance needs of a person who is not Title XIX-enrolled. This involves responding to general inquiries;



additionally includes, providing timely and unsolicited notification to ensure involvement in the following:

- Inpatient treatment and discharge planning (ITDP) during the person's stay at the AzSH; and
- Investigation, grievance or appeals processes.

If such procedures are delayed in order to ensure the participation of the person providing Special Assistance, the TRBHAs and subcontracted providers must document the reason for the delay in the clinical record.

TRBHAs and subcontracted providers shall provide relevant details and a copy of the original *PM Form 5.4.1, Notification of Person in Need of Special Assistance* (both *Parts A* and *B*) to the receiving entity and when applicable, case manager when a person in need of Special Assistance is:

1. Admitted to an inpatient facility;
2. Admitted to a residential treatment setting; or
3. Transferred to a different TRBHA, case management provider site or case manager.

TRBHAs and subcontracted providers must periodically review whether the person's Special Assistance needs are being met by the person or agency designated to meet those needs. If a concern arises, the TRBHA and subcontracted provider should initially address the problem with the person providing Special Assistance. If the issue is not promptly resolved, they must take further action to address the issue, which may include contacting OHR administration for assistance

Special Assistance Notification form (both *Parts A* and *B*) to the receiving entity or case manager when a person in need of Special Assistance who is also Title XIX-enrolled (on AHCCCS) is admitted to an inpatient facility or is transferred to a different TRBHA, case management provider site or case manager.

TRBHAs and subcontracted providers shall provide relevant details and a copy of the original Special Assistance Notification form (both Parts A and B) to the receiving entity when a person in need of Special Assistance who is Non-Title XIX-enrolled is admitted to AzSH or is transferred to a different TRBHA or provider site.

G. Confidentiality:

TRBHAs, AzSH and subcontracted providers shall grant access to clinical records of persons in need of Special Assistance to the Office of Human Rights



in accordance with all federal and state confidentiality laws. (For further clarification see *Section 4.1 Disclosure of Behavioral Health Information*)

H. Other requirements:

TRBHAs, and their subcontracted providers must maintain a copy of the completed *PM Form 5.4.1* (both *Parts A, B* and *updated B*, if any) in the person's comprehensive clinical record. In the event a person was identified as no longer needing Special Assistance and a *Part C* of the notification form was completed, the TRBHAs and subcontracted providers must maintain a copy of the *PM Form 5.4.1* in the comprehensive clinical record.

TRBHAs, and subcontracted providers must also clearly document in the clinical record (i.e. in the assessment, ISP, ITDP, face sheet) and case management/client tracking system if an individual is identified as Special Assistance, the person assigned currently to provide Special Assistance, the relationship, contact information of phone number and mailing address.

To support the TRBHAs and OHR in maintaining accurate and up-to-date information on persons in need of Special Assistance, subcontracted providers are required to follow the TRBHAs quarterly procedures for data updates about currently identified/active persons in need of Special Assistance.