



Section 5.5 Notice and Appeal Requirements (SMI and General)

- I. Statement of Purpose
- II. References
- III. Standards
- IV. Definitions
- V. Objectives
- VI. Procedures
 - A. General requirements for notice and appeals
 - B. Notice requirements for persons applying for or who have been determined to have a Serious Mental Illness (SMI)
 - C. Notice requirements for non-SMI recipients for service decisions covered under this policy
 - D. Filing an appeal
 - E. Appeal process for persons applying for or who have been determined to have an SMI
 - F. General appeals
 - G. Behavioral health provider responsibilities

I. STATEMENT OF PURPOSE:

This section applies to notice and appeal requirements for:

- Persons who have been determined to have a Serious Mental Illness (SMI);
- Persons who are applying for an SMI eligibility determination; and
- Behavioral health recipients who do not have an SMI and who are not Title XIX or Title XXI eligible.
- Persons who are Title XIX/XXI eligible, who do not have an SMI and who are not covered under *Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons*.

The notice requirements and the appeal process for persons who are Title XIX/XXI eligible are described in *Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons*.

Persons who are applying for or have been determined to have an SMI must be provided notice under certain circumstances. Notice allows a behavioral health recipient to exercise their right to appeal a decision or can inform persons of their rights. This section describes the circumstances when notice must be provided to persons who are applying for or have been determined to have an SMI.



Persons who are applying for or have been determined to have an SMI can appeal certain decisions. These include, but are not limited to:

- Decisions regarding an SMI eligibility determination:
- Decisions regarding the need for, the timely provision of, or the continuation of behavioral health services; and
- Decisions regarding charges or co-payments for behavioral health services.

Persons who do not have an SMI and who are not Title XIX or Title XXI eligible do not receive notices, but can appeal decisions related to the provision of Non-Title XIX/XXI, Non-SMI funded behavioral health services.

II. **REFERENCES:**

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

Section 5.3, Grievances and Request for Investigation for Persons Determined to have a Serious Mental Illness (SMI)

Section 5.2, Member Complaints

Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons

Section 5.6, Provider Claims Disputes

Section 3.14, Securing Services and Prior Authorization

Section 3.6, Member Handbook

The following citations can serve as additional resources for this content area:

A.R.S. § 12-901 et.seq

A.R.S. § 36-111

A.R.S. § 36-3413

A.R.S. § 41-1061 et.seq

9 A.A.C. 1, Article 1

9 A.A.C. 21, Articles 2 and 4

III. **STANDARDS:**

This section applies to:

1. Persons who have been determined to have an SMI;
2. Persons who are applying for an SMI eligibility determination;



3. Behavioral health recipients who do not have an SMI and who are not Title XIX or Title XXI eligible; and
4. Behavioral health recipients who are Title XIX/XXI eligible, who do not have an SMI and who are not covered under *Section 5.1, Notice Requirements and Appeals Process for Title XIX and Title XXI Eligible Persons*.

Each TRBHA is responsible for processing appeals and may not delegate this responsibility to any other entity.

- Although the TRBHAs and the Arizona Health Care Cost Containment System (AHCCCS) are directly responsible for processing all member appeals, it is important for behavioral health providers to be aware of the fundamental aspects of the appeal process and to offer behavioral health recipients assistance when requested or necessary.
- Persons determined to have an SMI, or others acting on their behalf, may also file grievances and requests for investigation under specified conditions (see *Section 5.3, Grievance and Request for Investigation for Persons Determined to have a Serious Mental Illness (SMI)*).

IV. **DEFINITIONS:**

Action: The denial or limited authorization of a requested service, including the type or level of service;

1. The reduction, suspension, or termination of a previously authorized service;
2. The denial, in whole or in part, of payment of service;
3. The failure to provide covered services in a timely manner;
4. The failure to act within established timeframes for resolving an appeal or complaint and providing notice to affected parties; and
5. The denial of the Title XIX/XXI eligible person's request to obtain covered services outside the network.

Appeal: A request for review of an action. For purposes of this section, a request for review of a decision made by AHCCCS, Arizona State Hospital (AzSH), a TRBHA or a TRBHA provider.

Complaint: Also known as Enrollee or Member Grievance. An expression of dissatisfaction with any aspect of care other than the appeal of an action



involving Title XIX/XXI recipients. Complaints include, but are not limited to, concerns about the quality of care or services provided, a disagreement with a decision to extend the timeframe for making an authorization decision, aspects of interpersonal relationships with service providers, and lack of respect for recipients' rights

Denial: The decision to deny an initial request made by, or on behalf of, a behavioral health recipient for the authorization of a covered service.

Limited Authorization: A service authorization that falls short of the original request, with respect to either the duration, frequency, or type of service requested.

PASRR: Pre-Admission Screening and Resident Review.

Prior Authorization: A process that requires the behavioral health practitioner to obtain approval from the T/RBHA prior to the provision of the covered service. Prior authorization is not a guarantee of payment.

Qualified Clinician: Means 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 behavioral health professional.

Reduction of Service: Reduction of service occurs when a decision is made to reduce the frequency or duration of an ongoing 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.

Suspension of Service: A decision to temporarily stop providing a service.

Termination of Service: A decision to stop providing a covered behavioral health service.

V. **OBJECTIVES:**

The objectives of this section are to ensure persons applying for or who have been determined to have a SMI are provided required notices, which:

1. Are timely;
2. Explain the action to be taken and the appeal process available to the person or custodial/legal guardian; and
3. Are written in a manner that is clear and easily understood by the person; and



4. Persons applying for or who have been determined to have an SMI and persons who do not have a n SMI and who are not Title XIX or Title XXI eligible have access to an appeals process that fairly and efficiently resolves identified issues.

VI. PROCEDURES:

A. General requirements for notice and appeals:

Behavioral health providers must be aware of general requirements guiding notice and appeal rights for the populations covered in this section. Behavioral health providers may have direct responsibility for designated functions (i.e., sending notice) as determined by the TRBHA and/or may be asked to provide assistance to persons who are exercising their rights to appeal.

How is time computed?

In computing any time prescribed or allowed in this section, the period begins the day after the act, event or decision occurs. If the period is 11 days or more, the time period must be calculated using calendar days, which means that weekends and legal holidays are counted. If, however, the period of time is less than 11 days, the time period is calculated using working days, in which case, weekends and legal holidays must not be included in the computation. In either case, 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.

Language, format and comprehensive clinical record requirements:

Notice and related forms must be available in each prevalent, non-English language spoken in the TRBHA's geographic service area. As designated by the TRBHA, behavioral health providers must provide free oral interpretation services to all persons who speak non-English languages for purposes of explaining the appeal process and/or information contained in the notice.

Notice and other written documents pertaining to the appeal process must be available in alternative formats, such as Braille, large font or enhanced audio and must take into consideration any special communication needs of the person applying for or receiving behavioral health services.

The provision of notice must be documented by placing a copy of the notice in the person's comprehensive clinical record.

Delivery of notices and appeal decisions

All notices and appeal decisions must be personally delivered or mailed by certified mail to the required party, at their last known residence or place of business. If unsafe to contact the person at his or her home, or the person has



indicated that he or she does not want to receive mail at home, the alternate methods identified by the person for communicating notices must be used.

B. Notice requirements for persons applying for or who have been determined to have an SMI:

Under what circumstances does a notice have to be provided?

For actions (see definition) related to Title XIX/XXI covered services. See *Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons*.

The following provisions apply to notice requirements for persons determined to have an SMI and for persons for which an SMI eligibility determination is being considered:

1. Persons who are applying for an SMI eligibility determination must receive *Attachment 5.5.1, Notice of SMI Grievance and Appeal Procedure*, at the time of application.
2. *PM Form 5.5.1, Notice of Decision and Right to Appeal* must be provided to persons determined to have an SMI or to persons applying for SMI services when:
 - a. Initial eligibility for SMI services is determined. The notice must be sent within three days of the eligibility determination;
 - b. A decision is made regarding fees or waivers;
 - c. The assessment report, service plan or individual treatment and discharge plan is developed, provided or reviewed;
 - d. A decision is made to modify the service plan, reduce, suspend or terminate is a service funded through Non-Title XIX funds. In this case, notice must be provided at least 30 days prior to the effective date unless the person consents to the change 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;
 - e. A decision is made that the person is no longer eligible for SMI services; and
 - f. A Preadmission Screening and Resident Review (PASRR) determination in the context of either a preadmission screening or an annual resident review, which adversely affects the person.



Other notices that must be provided to persons determined to have an SMI:

The following additional notices must be provided to persons determined to have an SMI or persons applying for SMI services:

- Notice of legal rights for persons with Serious Mental Illness (see *Form MH-211*) at the time of admission to a behavioral health provider agency for evaluation or treatment. The person receiving this notice must acknowledge in writing the receipt of the notice and the behavioral health provider must retain the acknowledgement in the person's comprehensive clinical record. All behavioral health providers must post *Form MH-211*, "Notice of Legal Rights for Persons with Serious Mental Illness," in both English and Spanish, so that it is readily visible to behavioral health recipients and visitors;
- Notice of discrimination prohibited (see *Form MH-209*), posted in English and Spanish so that it is readily visible to persons visiting the agency, and a copy provided at the time of discharge from the behavioral health provider agency.

Who is responsible for providing the notice?

Following a decision requiring notice to a behavioral health recipient, Pascua Yaqui TRBHA or AHCCCS must ensure the communication of a notice to the person.

AHCCCS sends notices to persons determined to have a Serious Mental Illness who are enrolled with a TRBHA when making a decision on behalf of the Tribal RBHA, and persons adversely affected by a PASRR determination.

C. Notice requirements for Non-Title XIX/XXI/Non-SMI populations:

Behavioral health recipients who do not have a Serious Mental Illness and who are not Title XIX/XXI eligible are not required to receive notice under any circumstances.

D. Filing an appeal:

Appeals that are related to a TRBHA or one of their contracted behavioral health providers' decisions must be filed with the TRBHA. Appeals that are related to a TRBHA or one of their contracted behavioral health providers' decisions and appeals that relate to PASRR determinations are filed with and processed by the AHCCCS Office of Grievance and Appeals.

Title XIX/XXI eligible persons applying for or who have been determined to have an SMI and who are appealing an action affecting Title XIX/XXI covered services



may elect to use either the Title XIX/XXI appeal process (see *Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons*) or the appeal process for persons determined to have an SMI described within *Subsection 5.5.7-E*.

What kinds of appeals exist?

There are two appeal processes applicable to this section:

1. Appeals of persons applying for or determined to have an SMI; and
2. Appeals for other covered service-related issues.

Who can file an appeal?

The following persons and entities may file an appeal:

1. An adult applying for or receiving behavioral health services, their legal guardian, guardian ad litem, designated representative or attorney;
2. A legal guardian or parent who is the legal custodian of a person under the age of 18 years;
3. A court appointed guardian ad litem or an attorney of a person under the age of 18 years;
4. A state or governmental agency which acquires behavioral health services through an Interstate Agreement (ISA) or Intergovernmental Agreement (IGA) with AHCCCS, but which does not have legal custody or control of the person shall have appeal rights to the extent specified in the ISA/IGA between the agency and the AHCCCS; and
5. A provider, acting on the behavioral health recipient's behalf and with the written authorization of the person.

What are the timeframes for filing an appeal?

Appeals must be filed orally or in writing with the responsible TRBHA, or AHCCCS when required, within 60 days from the date of the decision being appealed. Late appeals must be accepted upon showing good cause.

Where must appeals be directed?

For oral appeals to the TRBHA: Call the Pascua Yaqui TRBHA at 520-879-6060 or this toll-free telephone number 1-800-572-7282 ext. 6060



To submit a written appeal to the TRBHA: Mail the appeal to Quality Manager at the Centered Spirit Program TRBHA, 4567 W. Tetakusim Road, Tucson, AZ 85757.

For oral appeals to AHCCCS: Call AHCCCS at this toll-free number-1-800-421-2124 or (602) 364-4585 within Maricopa County.

To submit a written appeal to AHCCCS: Mail the appeal to 150 North 18th Avenue, Suite 210, Phoenix, Arizona 85007.

E. Appeal process for persons applying for or who have been determined to have an SMI:

An appeal may be filed concerning one or more of the following:

1. Decisions regarding the person's SMI eligibility determination;
2. Sufficiency or appropriateness of the assessment;
3. Long-term view, service goals, objectives or timelines stated in the Individualized Service Plan (ISP) or Inpatient Treatment and Discharge Plan (ITDP);
4. Recommended services identified in the assessment report, ISP or ITDP;
5. Actual services to be provided, as described in the ISP, plan for interim services or ITDP;
6. Access to or prompt provision of services;
7. Findings of the clinical team regarding the person's competency, capacity to make decisions, need for guardianship or other protective services or need for special assistance;
8. Denial of a request for a review of, the outcome of, a review of, a modification to or failure to modify or termination of an ISP, ITDP or portion of an ISP or ITDP;
9. Application of the procedures and timeframes for developing the ISP or ITDP;
10. Implementation of the ISP or ITDP;
11. 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;



12. Decisions regarding a person's fee assessment or the denial of a request for a waiver of fees;
13. Denial of payment of a claim;
14. Failure of the TRBHA or AHCCCS to act within the timeframes regarding an appeal; and
15. A PASRR determination, in the context of either a preadmission screening or an annual resident review, which adversely affects the person.

Expedited appeals

A person, or a provider on the person's behalf, may request an expedited appeal for the denial or termination of crisis or emergency services, the denial of admission to or the termination of a continuation of inpatient services or for good cause.

Continuation of services for appeals involving persons determined to have an SMI

For persons determined to have an SMI, the person's behavioral health services will continue while an appeal of a modification to or termination of a covered behavioral health service is pending unless:

1. A qualified clinician determines 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
2. The person or, if applicable, the person's guardian, agrees in writing to the modification or termination.

F. Appeals for Non-Title XIX/XXI/Non-SMI populations:

Based on available funding, a person who is Non-Title XIX/XXI and Non-SMI may file an appeal of a decision that is related to a determination of need for a covered service (e.g., modification to previously authorized services for a Non-Title XIX/XXI eligible person).

In these circumstances, there is no continuation of services available during the appeal process.

G. Behavioral health provider responsibilities:

While providers are not directly responsible for the resolution of appeals, they are required to actively participate in the process as follows:

5.5 - 10

5.5 Notice/Appeal Requirements
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PY TRBHA - CSP
Provider Manual - 2023



1. Provide information deemed to be necessary by the TRBHA, AHCCCS or the Office of Administrative Hearings (e.g., documents and other evidence); and
2. Cooperate and participate as necessary throughout the appeal process.

Behavioral health providers must be available to assist a person in the filing of an appeal. For persons determined to have an SMI, the Office of Human Rights is also available to assist the person in filing as well as resolving the appeal.

Behavioral health providers must not retaliate against any persons who file appeals or interfere with a person's right to file an appeal. Additionally, no punitive action will be taken against a behavioral health provider who supports a person's appeal.