



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Behavioral Health and Service Integration Administration, Division of Behavioral Health and Recovery

Preproposal Statement of Inquiry was filed as WSR: 14-16-111; or
 Expedited Rule Making--Proposed notice was filed as WSR: ___; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR:
 Continuance of WSR:

Title of rule and other identifying information: (Describe Subject) New: WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment; 388-877A-0410 Grievance system—Definitions; 388-877A-0420 Grievance process; 388-877A-0430 Notice of action; 388-877A-0440 Appeal process; 388-877A-0450 Administrative hearings; 388-877A-0460 Individual rights specific to medicaid recipients; 388-877-0605 DBHR complaint process. Repeal: WAC 388-865-0255 Consumer grievance process.

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504
Public parking at 11th and Jefferson. A map is available at:
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail DSHSRPAURulesCoordinator@dshs.wa.gov
fax (360) 664-6185
by: 5:00 p.m. March 10, 2015

Date: March 10, 2015 Time: 10:00 a.m.

Assistance for persons with disabilities: Contact Jeff Kildahl, DSHS Rules Consultant by TTY (360) 664-6178 or (360) 664-6094 or by email at Kildaja@dshs.wa.gov

Date of intended adoption: Not earlier than March 11, 2015
(Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed new rules inform individuals applying for, eligible for, or receiving mental health services of their right to express dissatisfaction regarding a mental health service and how to use the Regional Support Network's (RSN's) grievance system. The rules inform consumers of behavioral health services how to use the Division of Behavioral Health and Recovery's (DBHR's) complaint process, and update and clarify individual rights specific to the Medicaid program. The department is repealing WAC 388-865-0255 that is outdated due to these new rules.

Statutory authority for adoption: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035(5)(c), and 71.34.380; 42 CFR §438.400

Statute being implemented: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035(5)(c), and 71.34.380; 42 CFR §438.400

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
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DATE: January 15, 2015

TIME: 9:09 AM

WSR 15-03-057

DATE

January 14, 2015

NAME (type or print)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Kathy Sayre	PO Box 45330, Olympia, WA 98504-5330	(360) 725-1342
Implementation....	Dennis Malmer	PO Box 45330, Olympia, WA 98504-5330	(360) 725-3747
Enforcement.....	Dennis Malmer	PO Box 45330, Olympia, WA 98504-5330	(360) 725-3747

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Kathy Sayre, Rules Manager
Address: PO Box 45330, Olympia, WA 98504-5330
Phone: (360) 725-1342
Fax: (360) 725-2280
e-mail: kathy.sayre@dshs.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Kathy Sayre
Address: PO Box 45330, Olympia, WA 98504-5330

Phone: (360) 725-1342
fax: (360) 725-2280
e-mail: kathy.sayre@dshs.wa.gov

No: Please explain:

MEMORANDUM

DATE: January 13, 2015

TO: Katherine Vasquez, Rules Coordinator
Rules and Policies Assistance Unit

FROM: Kathy Sayre, Rules Manager
Division of Behavioral Health and Recovery

SUBJECT: Small Business Economic Impact Statement and Cost Benefit Analysis New sections: WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment; WAC 388-877A-0410 Grievance system—Definitions; WAC 388-877A-0420 Grievance process; WAC 388-877A-0430 Notice of action; WAC 388-877A-0440 Appeal process; WAC 388-877A-0450 Administrative hearings; WAC 388-877A-0460 Individual rights specific to medicaid recipients; WAC 388-877-0605 DBHR complaint process.
Repeal: WAC 388-865-0255 Consumer grievance process.

SUMMARY OF PROPOSED RULES

The Division of Behavioral Health and Recovery (DBHR) of the Department of Social and Health Services (the department) is adopting new sections in chapters 388-877 and 388-877A WAC that clarify how individuals can express concern about their rights, services, or treatment regarding mental health services received from an agency contracted through a Regional Support Network (RSN). The rules also inform consumers of behavioral health services how to use the Division of Behavioral Health and Recovery's (DBHR's) complaint system. WAC 388-865-0255, Consumer grievance process, is being repealed. These rules:

- Explain DBHR's complaint process and the grievance process, the appeal process, and access to administrative hearings.
- Describe how an individual who receives mental health services can express dissatisfaction about a service, define words and phrases used in the grievance system, and update specific individual rights for Medicaid recipients.
- Repeal a section that has been updated and incorporated in the new rules.

INVOLVEMENT OF STAKEHOLDERS AND SMALL BUSINESSES

The department recently adopted new chapters 388-877, 877A, 877B, and 877C WAC regarding behavioral health services and subsequently provided stakeholder and

provider trainings throughout the state in eight community locations. It was determined that there was a need to adopt rules to inform individuals of their right to express dissatisfaction regarding a behavioral health service and how to use the complaint process and grievance system. The department is also adopting a rule that identifies individual rights specific to Medicaid recipients.

The department filed a CR-101 (pre-proposal statement of inquiry) under WSR 14-16-111 on August 06, 2014. Copies of the CR-101 were sent to tribal leaders and all stakeholders and providers listed in DBHR's mailing list for rule notifications. In October 2014, the department sent a draft of the rules to all interested parties who contacted the department with an interest to participate in reviewing the proposed rule. The department provides a response to each comment received.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT – DETERMINATION OF NEED

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in a Small Business Economic Impact Statement (SBEIS). A SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses which employ fifty or fewer people and are independently owned and operated.

The rules in chapter 388-877A WAC apply specifically to behavioral health agencies that provide mental health treatment services to individuals. The department determined there are about 180 business entities that provide mental health services at more than 400 specific locations. Of the estimated 1,000 services sites providing behavioral health services, about 160 agencies provide both certified chemical dependency services and mental health services.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS

The department has determined these rules meet the definition of significant legislative rules under RCW 34.05.328(5)(c)(iii) because they make "significant amendments to, a policy or regulatory program."

RCW 34.05.328(1)(d) requires the department to analyze the probable costs and probable benefits of the rules, taking into account both the qualitative and quantitative costs and benefits. Impacted groups include behavioral health agencies owned by non-profit businesses, for-profit businesses, public non-profit providers, and tribal programs that provide DBHR-certified chemical dependency services and/or DBHR-certified outpatient mental health services.

COSTS AND BENEFITS

Under Chapter 19.85 RCW, the department has considered annual costs to small businesses that are fifty dollars or more per consumer and believes there are no costs or minimal costs for the rules that will affect services provided at service sites that meet the definition of a small business. Individuals who apply for, are eligible for, or receive behavioral health services will be informed of their rights to express dissatisfaction regarding a behavioral health service, and how to use the complaint process and grievance system. RSNs, agencies that with the RSN, and ombuds services staff will use the rules to apply the grievance system processes uniformly.

CONCLUSION

The department has given careful consideration to the impact of the proposed rules on small businesses. To comply with the Regulatory Fairness Act (Chapter 19.85 RCW), the department has analyzed impacts on small businesses and determined the costs to be minor and that the probable benefits outweigh the probable costs.

Please contact me if you have any questions at 360-725-1342, toll free at 1-877-301-4557, or by email at kathy.sayre@dshs.wa.gov.

NEW SECTION

WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment. (1) An individual applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN), the individual's representative, or the individual's legal guardian may access the RSN's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

- (a) A grievance process;
- (b) An appeal process; and
- (c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

- (a) The grievance process, subject to the rules in WAC 388-877A-0420; or
- (b) The appeal process, subject to the rules in WAC 388-877A-0440.

(3) Individuals may also use the free and confidential ombuds services through the RSN that contracts with the behavioral health agency in which they receive mental health services. Ombuds services are provided independent of RSNs and agency services providers, and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

- (4) See WAC 388-865-0250 for more information on ombuds services.

NEW SECTION

WAC 388-877A-0410 Grievance system—Definitions. The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a regional support network (RSN):

- (a) The denial or limited authorization of a requested service, including the type or level of service;
- (b) The reduction, suspension, or termination of a previously authorized service;
- (c) The denial in whole or in part, of payment for a service;
- (d) The failure to provide services in a timely manner, as defined by the state; or

- (e) The failure of an RSN or its contracted behavioral health agency to act within the timeframes provided in section 42 CFR 438.408(b).

(2) "Administrative hearing" means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about DSHS programs and services.

(3) "Appeal" means a written request by an individual, or with the individual's written permission, the individual's representative, for the regional support network (RSN) to reconsider an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal a decision made by the regional support network (RSN) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed more quickly by the regional support network (RSN).

(6) "Grievance" means an expression of dissatisfaction about any matter other than an action.

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a mental health service.

(8) "Grievance system" means the processes through a regional support network (RSN) in which an individual applying for, eligible for, or receiving mental health services may express dissatisfaction about services. The grievance system must be established by the RSN, must meet the requirements of 42 CFR 438 Subpart F, and include:

(a) A grievance process;

(b) An appeal process; and

(c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives regional support network (RSN)-authorized mental health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition of individual also includes the following if another person is acting on the individual's behalf:

(a) The individual's parent or, if applicable, the individual's custodial parent;

(b) The individual's legal guardian; or

(c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is the written notice a regional support network (RSN) provides to an individual and, if applicable, the individual's legal representative, to communicate an "action."

(11) "Regional support network (RSN)" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region. RSNs contract with behavioral health agencies to provide services.

NEW SECTION

WAC 388-877A-0420 Grievance process. (1) The grievance process is used by an individual or their representative to express dissatisfaction in person, orally, or in writing about any matter other than an action to:

(a) The behavioral health agency providing the mental health services; or

(b) The regional support network (RSN).

(2) The ombuds serving the behavioral health agency or RSN may assist the individual in resolving the grievance at the lowest possible level.

(3) Grievances are subject to the rules in this section, WAC 388-877A-0400, and WAC 388-877A-0430 through 388-877A-0460. An individual may choose to file a grievance with the behavioral health agency that provides the mental health services or with the RSN, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the grievance is filed first with the behavioral health agency and the agency's written decision is adverse to the individual, the individual may then choose to file the grievance with the RSN. If the RSN's written decision is adverse to the individual, the individual can request an administrative hearing.

(b) **Filing a grievance with an RSN.** If the grievance is filed first with the RSN (and not the agency), and the RSN's written decision is adverse to the individual, the individual can request an administrative hearing but cannot file the same grievance with the agency that contracts with the RSN.

(4) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (5) of this section.

(5) When an individual files a grievance, the behavioral health agency or RSN receiving the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) Apply the rules in subsection (6) of this section; and

(d) Send a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(6) The behavioral health agency or RSN receiving the grievance must ensure all of the following:

(a) Other people, if the individual chooses, are allowed to participate in the grievance process.

(b) The individual's right to have currently authorized mental health services continued pending resolution of the grievance.

(c) That a grievance is resolved even if the individual is no longer receiving mental health services.

(d) That the persons who make decisions on a grievance:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, are mailed a written notice containing the decision within ninety days from the date a grievance is received by the agency or RSN. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or RSN when additional information is needed and the RSN can demonstrate that the added time is in the individual's interest.

(f) That the written notice includes:

(i) The decision on the grievance;

(ii) The reason for the decision; and

(iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances are maintained and:

(i) Kept for six years after the completion of the grievance process;

- (ii) Made available to the department upon request as part of the state quality strategy;
- (iii) Kept in confidential files separate from the individual's clinical record; and
- (iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

NEW SECTION

WAC 388-877A-0430 Notice of action. The regional support network's (RSN's) written notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

- (1) The action the RSN or its contractor (behavioral health agency) has taken or intends to take;
- (2) The reason for the action and a citation of the rule(s) being implemented;
- (3) The individual's right to file an appeal with the RSN and the required timeframes if the individual does not agree with the decision or action;
- (4) The circumstances under which an expedited resolution is available and how to request it; and
- (5) The individual's right to receive mental health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision or action.

NEW SECTION

WAC 388-877A-0440 Appeal process. (1) The appeal process is used by an individual to ask the regional support network (RSN) to review an action that the RSN has communicated to the individual on a written notice of action (see WAC 388-877A-0430). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

- (2) The individual requesting review of an action:
 - (a) Must file an appeal and receive a notice of the resolution from the RSN before requesting an administrative hearing; and
 - (b) May not file a grievance with the behavioral health agency or the RSN for the same issue as the appeal once an appeal has been filed.
- (3) The appeal process can be:
 - (a) Standard as described in subsection (5) of this section; or
 - (b) Expedited if the criteria in subsection (6) of this section are met.
- (4) The RSN must ensure that the persons who make decisions on an appeal:
 - (a) Were not involved in any previous level of review or decision making; and

(b) Are mental health professionals who have clinical expertise.

(5) **Standard appeal process.** The standard appeal process includes the following:

(a) Standard appeals for actions communicated on a notice of action—continued services not requested. An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The RSN must confirm receipt of the appeal in writing within five business days.

(iii) The RSN must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal that includes:

(A) The RSN's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice.

(b) Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested. An individual receiving a notice of action from the RSN that terminates, suspends, or reduces previously authorized services may file an appeal and request continuation of those services pending the RSN's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the RSN within ten calendar days of the date on the notice of action; and

(B) Request continuation of services.

(ii) The RSN must:

(A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing;

(B) Send a notice in writing that follows up on any oral confirmation made; and

(C) Include in the notice that if the appeal decision is adverse to the individual, the RSN may recover the cost of the mental health services provided pending the RSN's decision.

(iii) The RSN's written notice of the resolution must contain:

(A) The RSN's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following time-frames:

(I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

(II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(6) **Expedited appeal process.** If an individual or the individual's mental health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal can be requested.

(a) Both of the following applies to expedited appeal requests:

(i) The action taken on the notice of action is for termination, suspension, or reduction of previously authorized mental health services; and

(ii) The appeal must be filed the RSN, either orally or in writing, within ten calendar days from the date on the RSN's written notice of action that communicated the action.

(b) The individual may ask for continued mental health services pending the outcome of the expedited appeal.

(c) The RSN must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution within two calendar days of receiving the request for an expedited appeal. The RSN may extend the timeframes up to fourteen additional days if the individual requests an extension or the RSN can demonstrate that the added time is in the individual's interest.

(7) **Duration of continued services during the appeal process.** When an individual has requested continued mental health services pending the outcome of the appeal process and the criteria in this section have been met, the RSN ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) Ten days pass from the date on the notice of action and both of the following occur:

(i) The RSN provides a written notice of the resolution that contains a decision that is adverse to the individual; and

(ii) The individual, within the ten-day timeframe, has not requested an administrative hearing with continuation of services.

(c) The time period of a previously authorized service has expired.

(d) A mental health treatment service limit of a previously authorized service has been fulfilled.

(8) **Recovery of the cost of mental health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is adverse to the individual, the RSN may recover the cost of the mental health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(9) The RSN must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

NEW SECTION

WAC 388-877A-0450 Administrative hearings. (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in

WAC 388-877A-0410, an opportunity to be heard in disputes about a mental health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877A-0420, or the appeal process described in WAC 388-877A-0440 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or RSN at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the RSN at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following applies:

(i) The decision on a notice of action must be for denial, suspension or termination of the individual's mental health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the RSN that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued mental health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued mental health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the RSN continues the individual's mental health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is adverse to the individual, the RSN may recover the cost of the mental health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern the department's hearing rules.

NEW SECTION

WAC 388-877A-0460 Individual rights specific to medicaid recipients. (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

- (i) All applicable statutory and constitutional rights;
- (ii) The participant rights provided under WAC 388-877-0600; and
- (iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary mental health services, consistent with the Access to Care Standards adopted by the department in its managed care waiver with the federal government.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of mental health providers in your RSN.

(iii) Receive information about the structure and operation of the RSN.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admittance to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a mental health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change mental health care providers during the first ninety days of treatment, or first twelve months of being approved for services.

(xviii) Request and receive a copy of your medical or mental health records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the RSN and behavioral health agency as they pertain to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Medically necessary services in accordance with the Early Periodic Screen, Diagnosis and Treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials and instructional materials relating to services provided by the regional support network (RSN), in an easily understood format and non-English language that you understand.

(xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint.

(xxviii) A second opinion from a qualified professional within your RSN area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).

(xxix) Receive medically necessary mental health services outside of the RSN if those services cannot be provided adequately and timely within the RSN.

(xxx) File a grievance with the RSN if you are not satisfied with a service.

(xxxi) Receive a notice of action so that you may appeal any decision by the RSN that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service; or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the RSN fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR §438.408(b).

(xxxiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxix) Services by an ombuds to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health services must ensure the medicaid rights described in (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative written format or language appropriate to the recipient and, if appropriate, the recipient's legal representative.

(c) Available in alternative formats for an individual who is blind;

(d) Translated to the most commonly used languages in the agency's service area; and

(e) Posted in public areas.

NEW SECTION

WAC 388-877-0605 DBHR complaint process. Any individual applying for or receiving behavioral health services, or the individual's representative, may use the division of behavioral and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) The DBHR complaint manager can be contacted at 360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov.

(2) Examples of complaints include, but are not limited to:

(a) An issue with a behavioral health service or case management;

(b) A possible violation of a DSHS rule; and

(c) A belief that the individual believes their rights have been or are being violated.

(3) DBHR requires the following information for each complaint:

(a) The name of the agency or agency provider involved;

(b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or time-frame it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the RSN, the agency, or agency provider.

(4) If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record and/or personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint.

(c) Conduct individual interviews with staff members and/or individuals receiving services.

(5) The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.

(6) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

(i) Restricting access to a treatment program;

(ii) Restricting access to the individual involved with the complaint issue;

(iii) Increasing or threatening to increase charges for services;

(iv) Decreasing or threatening to decrease services, rights, or privileges;

(v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and

(vi) Abusing or harassing, or threatening to abuse or harass the individual.

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

(7) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

(a) Any allegation within the complaint being substantiated; or

(b) DBHR's finding that the individual, an individual's representative, a witness, and/or employee of the agency experienced an act of

retaliation by the agency as described in subsection (6) of this section during or after a complaint investigation.

(8) DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.

(9) At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the regional support network's (RSN's) grievance system, subject to the applicable rules:

(a) The grievance process, subject to the rules in WAC 388-877A-0420.

(b) The appeal process, subject to the rules in WAC 388-877A-0440.

(c) An administrative hearing, subject to the rules in WAC 388-877A-0460.

(d) Ombuds services, as described in WAC 388-877A-0400(3) and 388-865-0250.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-865-0255 Consumer grievance process.