



**RULE-MAKING ORDER  
PERMANENT RULE ONLY**

**CR-103P (August 2017)  
(Implements RCW 34.05.360)**

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STATE OF WASHINGTON  
FILED

DATE: September 21, 2017

TIME: 3:57 PM

WSR 17-20-006

**Agency:** Department of Social and Health Services, Behavioral Health Administration

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** The department is amending rules about grievances, appeals, and hearings in chapter 388-877 WAC to align with the Centers for Medicare and Medicaid Services' (CMS) amended federal rules in 42 CFR 438 Subpart F that govern the grievance and appeals system for Medicaid managed care. States must comply with these federal rule amendments by July 1, 2017. The new definitions, timeframes, and alignment of certain processes for appeals and grievances will provide individuals with a more streamlined and manageable grievance and appeals process, and will allow behavioral health agencies and behavioral health organizations to further align rules applicable to private health insurance and group health plans that apply across the market. The department is limiting amendments to bringing the rules into compliance with federal rules and making necessary edits to change names and terms and clarify language without changing the rule's effect. When these rules become effective, they will supersede emergency rules filed as WSR 17-14-094 that went into effect July 1, 2017.

**Citation of rules affected by this order:**

New: None

Repealed: None

Amended: WAC 388-877-0654, WAC 388-877-0655, WAC 388-877-0660, WAC 388-877-0665, WAC 388-877-0670, WAC 388-877-0675, WAC 388-877-0680

Suspended: None

**Statutory authority for adoption:** RCW 71.05.560, RCW 71.24.035(5)(c), RCW 71.24.520, and RCW 71.34.380

**Other authority:** 42 C.F.R. 438 Subpart F, as amended in 81 Fed. Reg. 27498, May 6, 2016.

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 17-11-068 on May 17, 2017 (date).

Describe any changes other than editing from proposed to adopted version:

388-877-0654 (4) ...behavioral health ombuds services described in under ... lowest possible level before and during...

388-877-0654 new (5) In handling grievances and appeals, each BHO and behavioral health agency must give individuals any reasonable assistance in completing forms and taking other procedural steps related to a grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

388-877-0655 (2) new (f) For a resident of a rural area with only one BHO, the denial of an individual's request to exercise their right to obtain services outside the network;

388-877-0655 (2) new (g) The denial of an individual's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

388-877-0660 (2) ...~~grievances or expressions of dissatisfaction.~~

388-877-0660 (5) and (6) ...The grievance ~~cannot~~ does not progress to a hearing...

388-877-0660 (7)(f) ...decision as expeditiously as the individual's health condition requires, and no longer than...

388-877-0660 (8)(c)(i) ...~~Neither were not~~ involved ... ~~nor are subordinates a subordinate~~ of any...

388-877-0660 (8)(d) ...the individual's interest. The BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay; and

(ii) Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision;

388-877-0660 (8)(e) and 388-877-0665 (1)(a)...which includes requirements ~~requires~~ that each notice: (i) ~~is~~ Be written...

388-877-0665 (3)...timely manner, or when the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the individual's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is

considered exhaustion of the appeals process and the individual has a right to request an administrative hearing.  
388-877-0670 (2)...~~must file an appeal and receive a notice of the resolution from the BHO~~ exhaust the appeals process  
before...  
388-877-0670 (4)(a) ...evidence and testimony and make legal...  
388-877-0670 (4)(b) ...Provide the individual ~~opportunity, .. to examine~~ the individual's clinical record, including ~~examining~~  
new or...  
388-877-0670 (5)(a) ...~~Neither were not involved...~~ nor are subordinates a subordinate of any...  
388-877-0670 (6)...An oral filing of a standard an appeal...  
388-877-0670 (6)(c) ...resolution as expeditiously as the individual's health requires, and no longer... The BHO must:  
(i) Make reasonable efforts to give the individual prompt oral notice of the delay; and  
(ii) Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and  
inform the individual of the right to file a grievance if the individual disagrees with that decision.  
388-877-0670 (7) ...An oral filing of a standard an appeal...  
388-877-0670 (8) ...health provider believes feels that...  
388-877-0670 (8)(b)(ii) ...resolution as expeditiously as the individual's health condition requires, and no longer...  
388-877-0670 (9)(b)(i) ...of the hearing or if the individual is asking for an expedited hearing.  
388-877-0670 (9)(c) ...which includes requirements requires that each notice: (i) Be Is written...  
388-877-0675 (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 or notice of determination or the individual's  
behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize  
the individual's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited  
hearing may be requested...  
388-877-0675 (7) ...of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services  
after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See  
RCW 74.09.741.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: N/A

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>7</u>	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>7</u>	Repealed	___

**Date adopted:** September 19, 2017

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0654 How individuals ((can)) may express concern about their rights, services, or treatment.** (1) ~~((An individual applying))~~ Individuals who apply for, are eligible for, or ((receiving mental)) receive behavioral health services ((or substance use disorder services, or both,)) authorized by a behavioral health organization (BHO)~~((, the individual's representative, or the individual's legal guardian,))~~ may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

(2) The BHO's grievance and appeal system includes:

(a) A grievance process as described in WAC 388-877-0660;

(b) An appeal process as described in WAC 388-877-0670; and

(c) Access to administrative hearings as described in WAC 388-877-0675.

~~((2))~~ Before requesting an administrative hearing, the individual (3) Individuals must exhaust

~~((a))~~ The grievance process, subject to WAC 388-877-0660; or

~~((b))~~ the appeal process((, subject to WAC 388-877-0670)) before they have access to an administrative hearing.

~~((3))~~ (4) Individuals may also use the free and confidential behavioral health ombuds services described in WAC 388-865-0262 through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and ((agency services providers)) behavioral health agencies and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level before and during the grievance, appeal, or administrative hearing process.

~~((4))~~ See WAC 388-865-0262 for more information on ombuds services through the behavioral health ombuds office.

(5) In handling grievances and appeals, each BHO and behavioral health agency must give individuals any reasonable assistance in completing forms and taking other procedural steps related to a grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0655 Grievance and appeal system and administrative hearings—Definitions.** The terms and definitions in this section ~~((and WAC 388-877-0200))~~ apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 388-877-0200.

(1) ~~(("Action" means, in the case of a behavioral health organization (BHO):~~

~~(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 a BHO or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877-0660 through 388-877-0675.~~

~~(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)) to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.~~

~~(2) "Adverse benefit determination" means, in the case of Medicaid services administered by the BHO, any one or more of the following:~~

~~(a) 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;~~

~~(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;~~

~~(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 388-877-0660 through 388-877-0670 regarding the standard resolution of grievances and appeals;~~

~~(f) For a resident of a rural area with only one BHO, the denial of an individual's request to exercise their right to obtain services outside the network;~~

~~(g) The denial of an individual's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.~~

~~(3) "Appeal" means ((an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the)) a review by a behavioral health organization (BHO) ((to review)) of an ((action,)) adverse benefit determination, 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 an action made by the behavioral health organization (BHO) 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 by the behavioral health organization (BHO) more quickly than a standard appeal.~~

~~(6)) "Grievance" means an expression of dissatisfaction about any matter other than an ((action.)) adverse benefit determination. Grievances may include, but are not limited to, an individual's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the individual's rights~~

regardless of whether a specific action is requested by the individual.

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

~~(8))~~ (5) "Grievance and appeal system" means the processes ((through)) a ((behavioral health organization (BHO) in which an individual applying for, eligible for, or receiving behavioral health services may express dissatisfaction about services)) BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system ((must be established by the BHO, must)) and meet the requirements of 42 C.F.R. Sec. 438, Subpart F((, and include:

~~(a) A grievance process;~~

~~(b) An appeal process; and~~

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

(2017).

~~((9))~~ (6) "Individual" means a person who applies for, is eligible for, or receives ((behavioral health organization (BHO)) BHO-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 administrative hearing process, when another person is acting on an individual's behalf, the definition of individual also includes any of the following ((if another person is acting on the individual's behalf)):

~~(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; ((or))~~

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

~~((10))~~ (7) "Notice of ((action)) adverse benefit determination" is a written notice a ((behavioral health organization (BHO)) BHO provides to an individual to communicate an ("action.") adverse benefit determination.

~~((11) "Regional support network" or "RSN" no longer exists as of March 31, 2016. See WAC 388-865-0238, "Behavioral health organization.")~~

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

(a) The reason for denial or offering of alternative services;

(b) A description of alternative services, if available; and

(c) The right to request an administrative hearing, how to request a hearing, and the timeframes for requesting a hearing as identified in WAC 388-877-0675.

**WAC 388-877-0660 Filing a grievance ((process)).** (1) ~~((The grievance process is used by))~~ An individual or ((the)) individual's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an ("action,")) adverse benefit determination, as defined in WAC 388-877-0655, to:

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

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If an individual receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the individual's grievances ~~((or expressions of dissatisfaction))~~.

(3) There is no time limit to file a grievance.

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

~~((4) Grievances are subject to the rules in this section, WAC 388-877-0650, 388-877-0655, and 388-877-0665 through 388-877-0680. An individual may choose to file a grievance with the behavioral health agency that provides the behavioral health services or with the BHO, subject to the following:))~~

~~((a))~~ (5) **Filing a grievance with a behavioral health agency.** If ~~((the))~~ an individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection ((6)) (7) of this section, the individual may then choose to file the grievance with the BHO. ((If the individual is not satisfied with)) The BHO's written decision on the grievance((, or if the individual does not receive a copy of the decision from the BHO within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it)) is the final decision. The grievance does not progress to an administrative hearing except under circumstances described in subsection (9) of this section.

~~((b))~~ (6) **Filing a grievance with a BHO.** If the individual first files a grievance with the BHO ~~((+))~~and not the agency~~((+))~~, and the individual ~~((either))~~ is not satisfied with the BHO's written decision on the grievance, ~~((or does not receive a copy of the decision within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from a BHO,))~~ the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written decision on the grievance is the final decision. The grievance does not progress to an administrative hearing except under circumstances described in subsection (9) of this section.

~~((5))~~ An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection ~~(6)~~ of this section.)

~~((6))~~ (7) When an individual files a grievance, the behavioral health agency or BHO ~~((receiving))~~ that receives the grievance must:

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

(b) Investigate the grievance;

(c) At the individual's request, give the individual reasonable assistance in taking any procedural steps;

(d) Inform the individual about ombuds services and how to access these services;

(e) Apply the rules in subsection ~~((7))~~ (8) of this section;  
and

~~((d))~~ (f) Send the individual who filed the grievance a written notice describing the decision ~~((within))~~ as expeditiously as the individual's health condition requires, and no longer than ninety calendar days from the date the behavioral health agency or BHO receives the grievance ~~((was filed))~~.

~~((7))~~ (8) The behavioral health agency or BHO ~~((receiving))~~ that receives the grievance must ensure all of the following:

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

(b) ~~((The individual's right to have currently authorized behavioral health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.~~

~~(e))~~ That a grievance is resolved even if the individual is no longer receiving behavioral health services.

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

(i) Neither were ~~((not))~~ involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance; ~~((and))~~

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if ~~((the grievance))~~ deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues ~~((-))~~; and

(iii) Consider all comments, documents, records, and other information submitted by the individual or the individual's representative.

~~((e))~~ (d) That the individual and, if applicable, the individual's representative, ~~((receive))~~ receives a written notice containing the decision ~~((within))~~ no later than ninety calendar days from the date ~~((a grievance is received by))~~ the agency or BHO receives a grievance. This ~~((timeframe can))~~ time frame may be extended up to an additional fourteen calendar days ~~((+)~~

~~(i))~~ if requested by the individual or the individual's representative ~~((+))~~ or

~~(ii))~~ by the agency or BHO when additional information is needed and the agency or BHO ~~((can))~~ is able to demonstrate to the department upon the department's request that it needs additional information and ~~((that))~~ the added time is in the individual's interest. The BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay; and

(ii) Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision.

~~((f))~~ (e) That the written notice includes ~~((+ (i) The decision on))~~ the resolution of the grievance ~~((+ (ii)))~~, the reason for the decision ~~((+))~~, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10(2017), which includes requirements that each notice:

(i) Be written in the individual's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number;  
and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

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

~~((g))~~ (f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are ~~((maintained and))~~:

(i) Kept for ~~((six))~~ a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy and made available upon request to the centers for medicare and medicaid services (CMS);

(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.

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0665 Notice of ~~((action))~~ adverse benefit determination.** (1) ~~((The))~~ A behavioral health organization's (BHO's) notice of ~~((action))~~ adverse benefit determination provided to an individual must be in writing ~~((, be))~~ and in ~~((the individual's primary language, be))~~ an easily understood ~~((and,))~~ format following 42 C.F.R. Sec. 438.10(2017), which includes requirements that each notice:

(a) Be written in the individual's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDY telephone number;  
and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDY telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The ~~((action))~~ adverse benefit determination the BHO ~~((or its contractor (behavioral health agency)))~~ has ~~((taken))~~ made or intends to ~~((take))~~ make;

(b) The ~~((reason))~~ reasons for the ~~((action and a))~~ adverse benefit determination, including citation of the rule(s) ~~((being implemented))~~ and criteria used for the basis of the decision;

(c) The right of the individual to be provided reasonable access to and copies of all documents, records, and other information relevant to the individual's adverse benefit determination upon request and free of charge;

(d) The individual's right to file an appeal of the adverse benefit determination with the BHO ~~((and the required timeframes if the individual does not agree with the decision or action)), including information on exhausting the BHO's one level of appeal and the individual's right to request an administrative hearing;~~

~~((d))~~ (e) The circumstances under which an expedited ~~((resolution))~~ appeal process is available and how to request it; and

~~((e))~~ (f) The individual's right to receive behavioral 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))~~ in the notice of adverse benefit determination.

~~((2))~~ (3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required ~~((timeframes))~~ time frame, or fails to provide services in a timely manner ~~((or act within the grievance system timeframes, as defined in rule)), it is considered ~~((a denial))~~ an adverse benefit determination.~~ In these cases, the BHO sends a formal notice of ~~((action, which))~~ adverse benefit determination that includes the individual's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the individual has a right to request an administrative hearing.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0670 Filing an appeal ((process)).** (1) ~~((The appeal process is used by))~~ An individual may file an appeal to ask the behavioral health organization (BHO) to review an ~~((action))~~ adverse benefit determination that the BHO has communicated on a written notice of ~~((action (see WAC 388-877-0665)))~~ adverse benefit determination as defined in WAC 388-877-0655. An individual's representative may appeal an ~~((action))~~ adverse benefit determination with the individual's written consent. If a written notice of ~~((action))~~ adverse benefit determination was not received, an appeal may still be filed.

(2) The individual requesting review of an ~~((action))~~ adverse benefit determination must ~~((file an appeal and receive a notice of the resolution from the BHO))~~ exhaust the appeals process before requesting an administrative hearing.

(3) ~~((The appeal process can))~~ Appeals may be:

(a) Standard as described in subsection (6) and (7) of this section; or

(b) Expedited if the criteria in subsection ~~((+7))~~ (8) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and ~~((allegations of fact or law))~~ testimony and make legal and factual arguments in person as well as in writing. The BHO must inform the individual of the limited time available.

(b) Provide the individual ~~((opportunity)), ((before and during the appeal process, to examine))~~ free of charge and sufficiently in advance, the individual's clinical record, including new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

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

(5) The BHO must ensure that the persons who make decisions on an appeal:

(a) Neither were ((not)) involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal; ((and))

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service ~~((involved in the appeal.))~~ if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the individual regardless of whether the information was considered in the initial review.

(6) ~~((Standard appeal process. The standard appeal process includes the following:~~

~~((a+))~~ **Standard appeals for ~~((actions communicated on a notice of action-))~~ adverse benefit determination—continued services not requested.** An individual who disagrees with a decision ~~((or action))~~ communicated on a notice of ~~((action))~~ adverse benefit determination may file an appeal orally or in writing. An oral filing of ~~((an))~~ a standard appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

~~((+i))~~ (a) The individual must file the appeal within ~~((ninety))~~ sixty calendar days from the date on the notice of ~~((action))~~ adverse benefit determination.

~~((+ii))~~ (b) The BHO must confirm receipt of the appeal in writing within five business days.

~~((+iii))~~ (c) The BHO must send the individual a written notice of the resolution ~~((within forty-five))~~ as expeditiously as the individual's health condition requires, and no longer than thirty calendar days ~~((of receiving))~~ from the day the BHO received the appeal. This

~~((timeframe))~~ time frame may be extended up to fourteen additional calendar days if the individual requests an extension or the BHO ~~((ean))~~ is able to demonstrate to the department upon the department's request that it needs additional information and that the added time is in the individual's interest. The BHO must:

~~((i))~~ Make reasonable efforts to give the individual prompt oral notice of the delay; and

~~((ii))~~ Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision.

~~((d))~~ The written notice of the resolution must include~~((+))~~ all the information listed in subsection (9) of this section.

~~((A))~~ The BHO'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 of the resolution.

~~((b))~~ **(7) Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual ~~((receiving))~~ who receives a notice of ~~((action))~~ adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of ~~((an))~~ a standard 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 BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

~~((i))~~ (a) The individual must:

~~((A))~~ (i) File the appeal with the BHO on or before the later of the following:

~~((I))~~ (A) Within ten calendar days of the date on the notice of ~~((action))~~ adverse benefit determination; or

~~((II))~~ (B) The intended effective date of the BHO's proposed ~~((action.))~~ adverse benefit determination; and

~~((B))~~ (ii) Request continuation of services.

~~((ii))~~ (b) The BHO must:

~~((A))~~ (i) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five business days;

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

~~((C))~~ (iii) Include in the notice that if the appeal decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

~~((iii))~~ (c) The BHO's written notice of the resolution must contain~~((+))~~

~~((A))~~ The BHO'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) all of the information listed in subsection (9) of this section.~~

~~((7))~~ **(8) Expedited appeal process.** If an individual or the individual's behavioral health provider ~~((feels))~~ believes that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life, physical or mental health ~~((and)), or~~ ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal ~~((can))~~ may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the ~~((timeframe))~~ time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

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

(i) ~~The ((action taken on the notice of action is))~~ adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services; ~~((and))~~

(ii) The expedited appeal must be filed with the BHO, either orally or in writing ~~((7))~~ and within:

(A) Ten calendar days of the BHO's mailing the written notice of ~~((action that communicated the action,))~~ adverse benefit determination or the intended effective date of the BHO's proposed ~~((action))~~ adverse benefit determination, if the individual is requesting continued benefits; or

(B) ~~((Twenty))~~ Sixty calendar days from the date on the BHO's written notice of ~~((action that communicated the action))~~ adverse benefit determination if the individual is not requesting continued benefits.

(b) The BHO 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 three business days of))~~ as expeditiously as the individual's health condition requires, and no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the ~~((timeframes))~~ time frames up to fourteen additional calendar days if the individual requests an extension or the BHO ~~((can))~~ is able to demonstrate to the department upon the department's request that it needs additional information and that the added time is in the individual's interest. In this case the BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay;

(ii) Within two calendar days give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the individual's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports an individual's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the individual of the right to an administrative hearing if the individual disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(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 one hundred twenty calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10(2017), which includes requirements that each notice:

(i) Be written in the individual's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

~~((8))~~ **(11) Duration of continued services during the appeal process.** When an individual has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO ~~((ensures))~~ must ensure the services are continued until one of the following occurs:

(a) The individual withdraws the appeal~~((-))~~; or

(b) The BHO 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 an administrative hearing within ten calendar days from the date the BHO mails the notice~~((- (See)))~~; see WAC 388-877-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process~~((+))~~

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

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

~~((9))~~ **(12) Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

**(13) Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the BHO may recover the cost of the behavioral 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. Recovery of the cost of medicaid services is limited to the first sixty days of services after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741.

~~((10))~~ **(14) Recordkeeping and maintenance of appeals.** The BHO must ~~((maintain))~~ ensure that full records of all appeals ((and ensure an individual's records)) and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for ~~((six))~~ a period of no less than ten years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy and made available upon request to the centers for medicare and medicaid services (CMS);

(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; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0675 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 ~~((388-877-0200))~~ 388-877-0655, an opportunity to be heard in disputes about ~~((a behavioral health program or service))~~ adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) An individual ~~((must first exhaust the grievance process described in WAC 388-877-0660, or the appeal process described in WAC 388-877-0670 before requesting))~~ may request an administrative hearing for the following reasons:

(a) After an individual receives notice that the BHO upheld an adverse benefit determination;

(b) After an individual receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 388-877-0660 and 388-877-0670. In this case, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) An individual ~~((requesting))~~ who requests an administrative hearing must do so within one of the following ~~((timeframes))~~ time frames:

(a) If continued services are not requested, a hearing must be requested within ~~((ninety))~~ one hundred twenty calendar days from ~~((+ (i) The date on the written notice from the agency or behavioral health organization (BHO) at the end of the grievance process; or (ii))~~ the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty calendar days from the date on the notice of determination.

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

(i) The individual appealed a decision on ((a)) the notice of ((action must be)) adverse benefit determination for termination, suspension, or reduction of the individual's behavioral health services ~~((and the individual appealed this decision));~~

(ii) The individual ~~((received a written notification of the resolution of the appeal from the BHO that upholds the decision on the notice of action))~~ appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

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

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(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))~~ or the individual's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the individual's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section applies if continued behavioral health services are requested.

(5) ~~((If a written notice was not received under subsection (3) or (4) of this section, the individual may still))~~ The BHO's failure to issue an appeal decision in writing within the time frames in WAC 388-877-0670 constitutes exhaustion of the appeal process and the individual may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO ~~((continues))~~ must continue the individual's behavioral 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 not in favor of the individual, the BHO may recover the cost of the behavioral 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. Recovery of the cost of medicaid services is limited to the first sixty days of services after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741.

(8) ~~((For purposes of this chapter,))~~ Administrative 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 cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

**WAC 388-877-0680 Individual rights specific to medicaid recipients.** (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(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 listed 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 behavioral health services, consistent with access to care standards adopted by the department in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA) division of behavioral health and recovery (DBHR) website.

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

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

(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 admission 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 behavioral health care provider for yourself and your child, if your child is under thirteen years of age.
  - (xvii) Change behavioral health care providers at any time for any reason.
  - (xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.
  - (xix) Be free from retaliation.
  - (xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.
  - (xxi) Receive the amount and duration of services you need.
  - (xxii) Receive services in a barrier-free (accessible) location.
  - (xxiii) Receive medically necessary services in accordance with the early periodic ~~((screen))~~ screening, diagnosis, and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.
  - (xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.
  - (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 used as a means of coercion, discipline, convenience, or retaliation.
  - (xxviii) Receive a second opinion from a qualified professional within your BHO 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)))~~ 42 C.F.R. Sec. 438.206(b)(3)(2015).
  - (xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.
  - (xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.
  - (xxxii) Receive a notice of ~~((action))~~ adverse benefit determination so that you may appeal any decision by the BHO 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.
  - (xxxiii) File an appeal if the BHO 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)))~~.
  - (xxxiiii) Request an administrative (fair) hearing if your ~~((grievance or))~~ appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 388-877-0660 and 388-877-0670.
  - (xxxv) Request services by the behavioral health ombuds office to help you ~~((in filing))~~ file 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))~~ that provides DBHR-certified mental health ~~((and/or))~~ services, DBHR-certified substance use disorder services, or both, must ensure the medicaid rights described in subsection (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 format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;
- (c) Translated to the most commonly used languages in the agency's service area; and
- (d) Posted in public areas.