

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
NARBHA Edition**

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

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5.1.1 Introduction

All Title XIX and Title XXI eligible persons must be afforded the opportunity to appeal specified actions that a behavioral health provider may initiate. The circumstances that constitute an action are defined in this section. When a behavioral health provider takes certain actions as defined by this section, the behavioral health recipient must receive adequate and timely notice. Notice allows a behavioral health recipient to exercise their right to appeal a decision. Appeals of decisions for Title XIX/XXI persons not falling within the scope of this policy will be covered under [Section 5.5, Notice and Appeal Requirements \(SMI and Non-SMI/Non-Title XIX/XXI\)](#).

Title XIX/XXI eligible persons who have been adversely affected by a PASRR determination in the context of either a preadmission screening or a resident review shall be provided notice and the opportunity to appeal by ADHS/DBHS.

The intent of this section is to provide information to behavioral health providers that describes the Title XIX and Title XXI member appeal process and describes procedures to ensure that behavioral health recipients receive appropriate notification of decisions, including:

- The events that require notice to a Title XIX/XXI eligible person; and
- The timeframes and content associated with providing notice.

5.1.2 References

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

- [42 CFR 431.200 et seq.](#)
- [42 CFR 438.210](#)
- [42 CFR 438.400 et seq.](#)
- [A.R.S. § 36-3413](#)
- [A.R.S. § 36-2903.01](#)
- [A.R.S. Title 41, Chapter 6, Article 10](#)

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[2 A.A.C. Chapter 19, Article 1](#)

[9 A.A.C. 34, Article 2](#)

[AHCCCS/ADHS Contract](#)

[ADHS/RBHA Contracts](#)

[ADHS/TRBHA IGAs](#)

[ADHS/DBHS Policy and Procedures GA 3.3, Title XIX/XXI Notice and Appeal Requirements](#)

[ADHS/DBHS Policy and Procedures MI 5.3, Pre-admission Screening and Resident Review](#)

[Section 3.6, Member Handbook](#)

[Section 3.9, Intake, Assessment and Service Planning](#)

[Section 3.14, Securing Services and Prior Authorization](#)

[Section 5.5, Notice and Appeal Requirements \(SMI and Non-SMI/Non-Title XIX/XXI\)](#)

[Section 5.6, Provider Claims Disputes](#)

[ADHS/DBHS Covered Behavioral Health Services Guide](#)

5.1.3 Scope

To whom does this apply?

This section applies to all Title XIX and Title XXI eligible persons who are seeking behavioral health services through the ADHS/DBHS behavioral health system.

5.1.4 Did you know...?

- ADHS/DBHS must have systems in place for Title XIX and Title XXI eligible persons that include a complaint process, an appeal process and access to the State's Fair Hearing process.
- All Title XIX/XXI eligible persons must receive a Notice of Action and have the right to an appeal when a claim for service relates to the payment for a service that is not Title XIX/XXI covered and the decision is to deny the claim in whole or in part. This Notice of Action must be sent to the person along with the explanation of benefits (EOB) when the claim for payment has been denied (see [Section 5.6, Provider Claims Disputes](#)). This notice requirement is a RBHA responsibility.
- NARBHA is the entity responsible for issuing Notices of Action for prior authorized services.
- A behavioral health provider can file an appeal on behalf of an enrolled behavioral health recipient.

5.1.5 Definitions

[Action](#)

[Appeal](#)

[Appeal Resolution](#)

[Complaint](#)

[Denial](#)

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[Health Care Professional](#)

[Limited Authorization](#)

[PASRR](#)

[Prior Authorization](#)

[Service Authorization Request](#)

5.1.6 Objectives

The objectives of this section are to ensure that Title XIX and Title XXI eligible persons seeking or receiving behavioral health services have access to an appeals process that fairly and efficiently resolves identified issues and that Title XIX/XXI eligible persons are provided required notices that:

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

5.1.7 Procedures

5.1.7-A: General Requirements

Language and Format Requirements

Entities responsible for sending notice to Title XIX/XXI eligible persons must ensure that:

- Notice and written documents related to the appeals process must be available in each prevalent, non-English language spoken within the RBHA's geographic service area;
- As applicable, behavioral health providers must provide free oral interpretation services to explain information contained in the notice or as part of the appeal process for all non-English languages;
- Notice and written documents related to the appeals process must be available in alternative formats, such as Braille, large font or enhanced audio and take into consideration the special communication needs of the person; and
- Notice and written documents must be written using an easily understood language and format.

Computation of time

Behavioral health providers must use the following methodology in computing any period of time described in this section:

Computation of time for appeals is in calendar days and begins the day after the act, event or decision and includes all calendar days and the final day of the period. For purposes of computing member appeal dates, if the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend (Saturday or Sunday) or a legal holiday. The first day of the "count" always begins on the day after the event. The due date for the appeal is the working day

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immediately after the last day of the “count” if the last day falls on a weekend or legal holiday. If the last day of the “count” falls on a weekday, then that weekday is the due date (For more information see the [AHCCCS Contractor Operation Manual \(ACOM\) Section 414, IV. Definitions](#)).

Prohibition of punitive action

Behavioral health providers must not take punitive action against a Title XIX/XXI eligible person who decides to exercise their right to appeal. RBHAs must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution to an appeal or who supports a Title XIX/XXI eligible person’s appeal.

5.1.7-B: Notice of Action

For Title XIX/XXI covered services, notice must be provided following:

- The denial or limited authorization of a requested service, including the type or level of service;
- The reduction, suspension or termination of a previously authorized service;
- The denial, in whole or in part, of payment for a service that is not TXIX/XXI covered; and
- The denial of the behavioral health recipient's request to obtain services outside the network.

Who is responsible for sending the notice?

Following an action requiring notice to a behavioral health recipient, the Responsible Agency where the recipient is enrolled must ensure the communication of a notice to the person, must ensure the communication of a notice to the person.

NARBHA is responsible for sending notices for services that require prior authorizations those include but are not limited to Level I, Level II, Level III, and HCTC placements.

ADHS/DBHS sends notices to Title XIX/XXI eligible persons enrolled with a Tribal RBHA following:

- The denial or limited authorization of a requested service , including the type or level of service (see [Section 3.14, Securing Services and Prior Authorization](#)); and
- The reduction, suspension or termination of a previously authorized service.

ADHS/DBHS sends notices to Title XIX/XXI eligible persons who have been adversely affected by a PASRR determination in the context of either a preadmission screening or a resident review.

How is notice communicated to Title XIX/XXI eligible persons?

The use of [PM Form 5.1.1](#) is required when providing notice regarding an action concerning a Title XIX/XXI person. (Please see the [AHCCCS Contractors Operations Manual \(ACOM\) 414](#) for guidance in preparation of this form). [PM Form 5.1.1](#) must be completed to include the following:

- The requested service;

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- The reason/purpose of that request in layperson terms;
- The action taken or intended to be taken (denial, limited authorization, reduction, suspension or termination) with respect to the service request;
- The effective date of the action;
- The reason for the action, including member specific facts;
- The legal basis for the action;
- Where members can find copies of the legal basis;
- The right to and process for appealing the decision; and
- Legal resources for members for help with appeals, as prescribed by AHCCCS (See [AHCCCS Contractors Operations Manual \(ACOM\) 414, Attachment C](#)).

Delivery of Notices

The Notice of Action must be delivered to the Title XIX/XXI eligible person and, when applicable, their legal guardian (e.g., Department of Economic Security/Division of Children, Youth and Families Child Protective Services Specialist). For Title XIX/XXI eligible persons under the age of 18, the Notice of Action must be delivered to their legal or custodial parent or a government agency with legal custody of the Title XIX/XXI eligible person.

All notices must be personally delivered or mailed by certified mail to all parties at their last known residence or place of business. In the event that it may be unsafe to contact a person at his or her home address, or the person does not want to receive mail at home, alternate methods identified by the person for communicating notice must be used.

5.1.7-C. Notice of Action timeframes

For service authorization requests, the following timeframes for sending notice of action are in effect (See [Section 3.14, Securing Services and Prior Authorization](#) for required timeframes for decisions regarding prior authorization requests):

- For an authorization decision related to a service requested by or on behalf of a behavioral health recipient, the responsible entity must send a notice of action within 14 calendar days following the receipt of the behavioral health recipient's request;
- For an authorization request in which the behavioral health provider indicates, or the responsible entity determines, that the 14 calendar day timeframe could seriously jeopardize the behavioral health recipient's life or health or ability to attain, maintain or regain maximum function, the responsible entity must make an expedited authorization decision and send the Notice of Action as expeditiously as the behavioral health recipient's health condition requires, but no later than three working days after receipt of the request for service;
- If the behavioral health recipient requests an extension of either timeframe above, the responsible entity must extend the timeframe up to an additional 14 days;
- If the responsible entity needs additional information and the extension is in the best interest of the behavioral health recipient, the responsible entity shall extend the 14 calendar day or the three working day timeframe up to an additional 14 days. If the responsible entity extends the timeframe, the responsible entity must:
 - Give the behavioral health recipient written notice of the reason for the decision to extend the timeframe using [PM Form 5.1.2, Notice of Extension of Timeframe for](#)

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[Service Authorization Decision Regarding Title XIX/XXI Behavioral Health Services](#), and inform the behavioral health recipient of the right to file a complaint if the behavioral health recipient disagrees with the decision; and

- Issue and carry out the determination as expeditiously as the behavioral health recipient's condition requires and no later than the date the extension expires.
- For service authorization decisions not reached within the maximum timeframes outlined above, the authorization shall be considered denied on the date that the timeframe expires.
- ADHS/DBHS, the T/RBHA or T/RBHA provider shall provide the requesting provider notification of a decision to deny a service authorization. The notification must be in writing.

For service terminations, suspensions or reductions, the following timeframes are in effect:

- The responsible entity must send the Notice of Action at least 10 calendar days before the date of the action with the following exceptions:
 - The responsible entity may send the Notice of Action no later than the date of the action if:
 - The responsible entity has factual information confirming the death of a behavioral health recipient;
 - The responsible entity receives a clear written statement signed by the behavioral health recipient that the behavioral health recipient no longer wishes services or the behavioral health recipient gives information to the responsible entity that requires termination or reduction of services and indicates that the behavioral health recipient understands that this will be the result of supplying that information;
 - The behavioral health recipient is an inmate of a public institution that does not receive federal financial participation and the person becomes ineligible for TXIX/XXI;
 - The behavioral health recipient's whereabouts are unknown and the post office returns mail directed to the behavioral health recipient to the responsible entity indicating no forwarding address;
 - The responsible entity establishes the fact that the behavioral health recipient has been accepted for Medicaid by another state; or
 - A change in the level of medical care is prescribed by the recipient's physician.
- The responsible entity may shorten the period of advance notice to five days before the date of action if the responsible entity has verified facts indicating probable fraud by the behavioral health recipient.
- The responsible entity may shorten the period of advance notice to two days before the date of action for the termination of non-emergency inpatient services, as a result of the denial of a continued stay request.

5.1.7-D. Title XIX and Title XXI appeal and State Fair Hearing process

Who is responsible?

Each RBHA is responsible for processing appeals and may not delegate this function to a behavioral health provider. ADHS/DBHS processes appeals related to actions initiated by a Tribal RBHA or one of their contracted behavioral health providers. Any responsibilities attributed to a RBHA in Subsections 5.1.7-D and 5.1.7-E of this section are the responsibility of

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ADHS/DBHS if the action relates to a Tribal RBHA or one of their subcontracted providers, or relates to an appeal concerning a PASRR determination.

The following information is provided to familiarize behavioral health providers with the Title XIX/XXI appeal process.

Who can file an appeal or request a State Fair Hearing?

The following persons or representatives may file an appeal or request a State Fair Hearing regarding an action:

- A Title XIX/XXI eligible person;
- An authorized representative, including a behavioral health provider, acting on behalf of the person, with the person's written consent.
- A Title XIX/XXI eligible person adversely affected by a PASRR determination in the context of either a preadmission screening or a resident review.

What is the timeframe for filing an appeal?

A Title XIX/XXI eligible person has up to 60 days after the date of the Notice of Action to file a standard appeal. The appeal may be filed orally or in writing.

How long does the RBHA have to resolve a standard appeal?

The RBHA must resolve standard appeals no later than 30 days from the date of receipt of the appeal, unless an extension is in effect.

Can the standard appeal resolution timeframe be extended?

If a Title XIX/XXI eligible person requests an extension of the 30-day timeframe, the RBHA must extend the timeframe up to an additional 14 days. If the RBHA needs additional information and the extension is in the best interest of the person, the RBHA may extend the 30-day timeframe up to an additional 14 days.

Under what circumstances must an appeal be expedited?

The RBHA must conduct an expedited appeal if:

- The RBHA receives a request for an appeal from a Title XIX/XXI eligible person and the RBHA determines that taking the time for a standard appeal resolution could seriously jeopardize the person's life or health, or ability to attain, maintain, or regain maximum function;
- The RBHA receives a request for an expedited appeal from a Title XIX/XXI eligible person supported with documentation from the behavioral health provider that taking the time for a standard resolution could seriously jeopardize the person's life or health, or ability to attain, maintain or regain maximum function; or
- The RBHA receives a request for an expedited appeal directly from a behavioral health provider, with the Title XIX/XXI eligible person's written consent, and the behavioral health provider indicates that taking the time for a standard resolution could seriously jeopardize the person's life or health, or ability to attain, maintain or regain maximum function.

What if the request for an expedited appeal is denied?

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If the RBHA denies a request for expedited resolution of an appeal from a Title XIX/XXI eligible person, the RBHA must resolve the appeal within the standard resolution timeframe and make reasonable efforts to give the person prompt oral notice of the denial. Within two calendar days, the RBHA must follow up with written notice of the denial.

How long does the RBHA have to resolve an expedited appeal?

The RBHA must resolve expedited appeals within three working days after the day the RBHA receives the appeal.

Can the expedited appeal resolution timeframe be extended?

If a Title XIX/XXI eligible person requests an extension of the three working day timeframe, the RBHA must extend the timeframe up to an additional 14 days. If the RBHA needs additional information and the extension is in the best interest of the person, the RBHA must extend the three working day timeframe up to an additional 14 days.

Requesting a State Fair Hearing

A Title XIX/XXI eligible person, legal guardian or authorized representative may request a State Fair Hearing following the RBHA's resolution of an appeal. The request must be in writing and submitted to NARBHA Grievance and Appeals Administrator. The request must be received by the RBHA no later than 30 days after the date that the person received the Notice of the Appeal Resolution.

What assistance must be provided to Title XIX/XXI eligible persons in filing an appeal and/or requesting a State Fair Hearing?

Reasonable assistance must be provided to Title XIX/XXI eligible persons in completing forms and other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability. Reasonable assistance may be offered by a behavioral health provider or referred to the RBHA by contacting NARBHA Member Services (800) 640-2123] or, for Title XIX/XXI eligible persons enrolled with a Tribal RBHA, by contacting ADHS/DBHS at (602) 364-4591.

5.1.7-E: Continuation of services during the appeal or State Fair Hearing process

For the purposes of this subsection, if the following criteria are met, services shall be continued based on the authorization that was in place prior to the denial, termination, reduction or suspension of services that has been appealed. A Title XIX/XXI eligible person's services can continue during the appeal and State Fair Hearing process, unless continuation of services would jeopardize the health or safety of the person or another person, if:

- The person files the appeal timely*;
- The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment or the appeal involves a denial if the provider asserts the denial represents a necessary continuation of a previously authorized service;
- The services were ordered by an authorized provider; and

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- The person requests continuation of services.

*Timely filing means filing on or before the later of the following:

- Within 10 days after the date that the RBHA mails or delivers the Notice of Action; or
- The effective date of the action as indicated in the Notice of Action.

A person must request the continuation of services when the appeal is initially filed **and** at the time of requesting a State Fair Hearing.

At what point will a person's services no longer be continued during the appeal or State Fair Hearing process?

The RBHA must continue services until one of the following occurs:

- The person withdraws the appeal;
- 10 days pass after the RBHA sends the Notice of Appeal Resolution to the person, unless the person, within the 10-day timeframe, has requested in writing a State Fair Hearing with continuation of benefits until a Director's decision is reached; or
- AHCCCS mails a Director's decision adverse to the person.

The RBHA must maintain evidence in the case record supporting that the RBHA continued the benefits under appeal pending the RBHA or State Fair Hearing decision when required to do so pursuant to this policy.

What happens if the person loses the appeal?

If the Director's decision upholds the RBHA's action, the RBHA may recover the cost of the services furnished to a Title XIX/XXI eligible person while the appeal is pending if the services were furnished solely because of the requirements of subsection 5.1.7-E.

Special considerations for persons determined to have a serious mental illness

For Title XIX/XXI eligible persons with a serious mental illness, please see [Section 5.5, Notice and Appeal Requirements \(SMI and Non-SMI/Non-Title XIX/XXI\)](#).