

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

Section 5.5 **Notice and Appeal Requirements (SMI and Non-SMI/Non-Title XIX/XXI)**

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5.5.1 **Introduction**

This section applies to notice and appeal requirements for:

- Persons who have been determined to have a Serious Mental Illness (SMI);
- Persons who are applying for an SMI eligibility determination; and
- Behavioral health recipients who do not have a Serious Mental Illness and who are not Title XIX or Title XXI eligible.

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

Persons who are applying for an eligibility determination or who have been determined to have a Serious Mental Illness must be provided notice under certain circumstances. Notice allows a behavioral health recipient to exercise his/her right to appeal a decision. This section describes the circumstances when notice must be provided to persons who are applying for an eligibility determination or who have been determined to have a Serious Mental Illness.

Persons who are applying for an eligibility determination or who have been determined to have a Serious Mental Illness can appeal certain decisions. These include, but are not limited to:

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

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

5.5.2 References

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

[A.R.S. § 12-901 et.seq](#)

[A.R.S. § 36-111](#)

[A.R.S. § 36-3413](#)

[A.R.S. § 41-1061 et.seq](#)

[9 A.A.C. 1, Article 1](#)

[9 A.A.C. 21, Articles 2 and 4](#)

[ADHS/T/RBHA Contracts](#)

[ADHS/T/RBHA IGAs](#)

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

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

[Section 5.2, Member Complaints](#)

[Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons](#)

[Section 5.6, Provider Claims Disputes](#)

[Section 3.6, Member Handbook](#)

5.5.3 Scope

To whom does this apply?

This section applies to:

- Persons who have been determined to have a Serious Mental Illness (SMI);
- Persons who are applying for an SMI eligibility determination;
- Behavioral health recipients who do not have a Serious Mental Illness and who are not Title XIX or Title XXI eligible.

5.5.4 Did you know...?

- Each RBHA is responsible for processing appeals and may not delegate this responsibility to any other entity.
- Although the RBHAs and ADHS/DBHS are directly responsible for processing all member appeals, it is important for behavioral health providers to be aware of the fundamental aspects of the appeal process and to offer behavioral health recipients assistance when requested or necessary.
- Persons determined to have a Serious Mental Illness, or others acting on their behalf, may also file grievances and requests for investigation under specified conditions (See [Section 5.3, Grievance and Request for Investigation for Persons Determined to have a Serious Mental Illness](#)).

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5.5.5 Definitions

[Action](#) –

[Appeal](#)

[Complaint](#)

[Denial](#)

[Limited Authorization](#)

[PASRR](#)

[Prior Authorization](#)

[Qualified Clinician](#)

[Reduction of Service](#)

[Suspension of Service](#)

[Termination of Service](#)

5.5.6 Objectives

The objectives of this section are to ensure:

Persons applying for an eligibility determination or who have been determined to have a Serious Mental Illness are provided required notices which:

- 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

Persons applying for an eligibility determination or who have been determined to have a Serious Mental Illness and persons who do not have a Serious Mental Illness and who are not Title XIX or Title XXI eligible have access to an appeals process that fairly and efficiently resolves identified issues.

5.5.7 Procedures

5.5.7-A. General requirements for notice and appeals

Behavioral health providers must be aware of general requirements guiding notice and appeal rights for the populations covered in this section. Behavioral health providers may have direct

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responsibility for designated functions (i.e., sending notice) as determined by the RBHA and/or may be asked to provide assistance to persons who are exercising their right to appeal.

How is time computed?

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

Language, format and comprehensive clinical record requirements

Notice and related forms must be available in each prevalent, non-English language spoken in the RBHA's geographic service area. As designated by the RBHA, behavioral health providers must provide free oral interpretation services to all persons who speak non-English languages for purposes of explaining the appeal process and/or information contained in the notice. Responsible Agencies (RA) will provide information to members with special communication needs.

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

Notice and written documents must be written using an easily understood language and format.

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

Delivery of notices and appeal decisions

All notices and appeal decisions must be personally delivered or mailed by certified mail to the required party, at their last known residence or place of business. In the event that it may be unsafe to contact the person at his or her home, or the person has indicated that he or she does not want to receive mail at home, the alternate methods identified by the person for communicating notices must be used.

5.5.7-B. Notice requirements for persons applying for or who have been determined to have a Serious Mental Illness

Under what circumstances does a notice have to be provided?

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

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

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Persons who are applying for an SMI eligibility determination must receive [PM Attachment 5.5.1, Notice of SMI Grievance and Appeal Procedure](#), at the time of application.

[PM Form 5.5.1, Notice of Decision and Right to Appeal](#) must be provided to persons determined to have a Serious Mental Illness or to persons applying for SMI services when:

- Initial eligibility for SMI services is determined. The notice must be sent within three days of the eligibility determination;
- A decision is made regarding fees or waivers;
- The assessment report, service plan or individual treatment and discharge plan is developed, provided or reviewed;
- A decision is made to modify the service plan, or to reduce, suspend or terminate any service that is a service funded through Non-Title XIX funds. In this case, notice must be provided at least 30 days prior to the effective date unless the person consents to the change or a qualified clinician determines that the action is necessary to avoid a serious or immediate threat to the health or safety of the person receiving services or others;
- A decision is made that the person is no longer eligible for SMI services; and
- A PASRR determination in the context of either a preadmission screening or an annual resident review, which adversely affects the person.

Other notices that must be provided to persons determined to have a Serious Mental Illness

The following additional notices must be provided to persons determined to have a Serious Mental Illness or persons applying for SMI services:

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

Who is responsible for providing the notice?

Following a decision requiring notice to a behavioral health recipient, NARBHA designates the responsibility for providing notice to NARBHAs Responsible Agency (RA) must ensure the communication of a notice to the person.

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

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

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

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5.5.7-D. Filing an appeal

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

Title XIX/XXI eligible persons applying for or who have been determined to have a Serious Mental Illness and who are appealing an action (see definition) affecting Title XIX/XXI covered services may elect to use either the Title XIX/XXI appeal process (see [Section 5.1, Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons](#)) or the appeal process for persons determined to have a Serious Mental Illness described within subsection 5.5.7-E.

What kinds of appeals exist?

There are two appeal processes applicable to this section:

- Appeals of persons applying for an eligibility determination or who have been determined to have a Serious Mental Illness; and
- Appeals for other covered service related issues.

Who can file an appeal?

The following persons and entities may file an appeal:

- An adult applying for or receiving behavioral health services, their legal guardian, guardian ad litem, designated representative or attorney;
- A legal guardian or parent who is the legal custodian of a person under the age of 18 years;
- A court appointed guardian ad litem or an attorney of a person under the age of 18 years;
- A state or governmental agency that provides behavioral health services through an ISA/IGA with ADHS, but which does not have legal custody or control of the person, to the extent specified in the ISA/IGA between the agency and the ADHS; and
- A provider, acting on the behavioral health recipient's behalf and with the written authorization of the person.

What are the timeframes for filing an appeal?

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

Where must appeals be directed?

- For oral appeals to the RBHA: Call NARBHA Grievance & Appeals at this toll free telephone number 1-800-640-2123.
- To submit a written appeal to the RBHA: Mail the appeal to NARBHA Grievance and Appeals at 1300 S. Yale Street, Flagstaff, AZ 86001.

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- For oral appeals to ADHS/DBHS: Call ADHS/DBHS at this toll free number-1-800-867-5808 or (602) 364-4575 within Maricopa County.
- To submit a written appeal to ADHS/DBHS: Mail the appeal to 150 North 18th Avenue, Suite 230, Phoenix, Arizona 85007.

5.5.7-E. Appeal process for persons applying for or who have been determined to have a Serious Mental Illness

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

- Decisions regarding the person's SMI eligibility determination;
- Sufficiency or appropriateness of the assessment;
- Long-term view, service goals, objectives or timelines stated in the Service Plan (SP) or Inpatient Treatment and Discharge Plan (ITDP);
- Recommended services identified in the assessment report, SP or ITDP;
- Actual services to be provided, as described in the SP, plan for interim services or ITDP;
- Access to or prompt provision of services;
- Findings of the clinical team with regard to the person's competency, capacity to make decisions, need for guardianship or other protective services or need for special assistance;
- Denial of a request for a review of, the outcome of, a review of, a modification to or failure to modify or termination of an SP, ITDP or portion of an SP or ITDP;
- Application of the procedures and timeframes for developing the SP or ITDP;
- Implementation of the SP or ITDP;
- Decision to provide service planning, including the provision of assessment or case management services to a person who is refusing such services, or a decision not to provide such services to the person;
- Decisions regarding a person's fee assessment or the denial of a request for a waiver of fees;
- Denial of payment of a claim;
- Failure of the RBHA or ADHS/DBHS to act within the timeframes regarding an appeal; and
- A PASRR determination, in the context of either a preadmission screening or an annual resident review, which adversely affects the person.

Expedited appeals

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

Continuation of services for appeals involving persons determined to have a Serious Mental Illness

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

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- A qualified clinician determines the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the person or another individual; or
- The person or, if applicable, the person's guardian, agrees in writing to the modification or termination.

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

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

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

5.5.7-G. Behavioral health provider responsibilities

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

- Provide information deemed to be necessary by the RBHA, ADHS/DBHS or the Office of Administrative Hearings (e.g., documents and other evidence); and
- Cooperate and participate as necessary throughout the appeal process.

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

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