



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

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5.5.1 **Introduction**

To ensure that persons seeking or receiving behavioral health services are provided notice and the opportunity to appeal as required by law.

5.5.2 **Terms**

Definitions for terms are located online at <http://www.azdhs.gov/bhs/definitions/index.php> or <http://www.narbha.org/for-providers/provider-resources/provider-policy-manual/definitions>. The following terms are referenced in this section:

[Action](#)

[Appeal](#)

[Denial](#)

[Limited Authorization](#)

[PASRR](#)

[Prior Authorization](#)

[Qualified Clinician](#)

[Reduction of Service](#)

[Suspension of Service](#)

[Termination of Service](#)

5.5.3 **Procedures**

- a. General Requirements for Notices and Appeals
 - i. Computation of Time
 - 1. 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,



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the time period 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.

- ii. Language and format requirements
 - 1. Notice and written documents generated through the appeals process shall be available in each prevalent, non-English language spoken in the 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. **NARBHA is responsible for performing this function.**
 - 2. ADHS/DBHS, the T/RBHA and T/RBHA subcontracted providers must provide oral interpretation services at no charge to the behavioral health recipient to explain information contained in the notice or as part of the appeal process for all non-English languages.
 - 3. Notice and other written documents generated through the appeals process shall be available in alternative formats, such as Braille, large font or enhanced audio and take into consideration the special communication needs of the person applying for or receiving behavioral health services. **NARBHA is responsible for ensuring the availability of alternative formats for Notices of Action issued by NARBHA. For Notices of action issued by NARBHA providers, the issuing provider has this responsibility.**
 - 4. Notice and written documents must be written using an easily understood language and format.
 - iii. Delivery of notices and appeal decisions
 - 1. All notices and appeal decisions identified herein shall be personally delivered or mailed by certified mail to the required party at their last known residence or place of work. In the event that it may be unsafe to contact the person at his or her home address, 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 shall be used.
 - iv. Prohibition of Punitive Action
 - 1. ADHS/DBHS, T/RBHA's and their providers are prohibited from taking punitive action against persons exercising their right to appeal.
- b. Notice requirements
- i. Notices pursuant to this section shall be delivered to:
 - 1. The eligible person; or
 - 2. The eligible person's legal or authorized representative and for persons identified as in need of Special Assistance, this includes the person designed to meet the Special Assistance Needs.
 - ii. Provision of notice shall be evidenced by retaining a copy of the notice in the comprehensive clinical record of the person receiving or requesting services.



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- c. Notices for persons being evaluated for or who have been determined to have SMI.
 - i. The T/RBHA shall provide ADHS/DBHS form, “Notice of SMI Grievance and Appeal Procedure” ([PM Attachment 5.5.1, Notice of SMI Grievance and Appeal Procedure](#)) to each person at the time of evaluation for an SMI eligibility determination.
 - ii. T/RBHAs, T/RBHA subcontracted providers and the AzSH shall provide a copy of [ADHS Form MH-211, “Notice of Legal Rights for Persons with Serious Mental Illness”](#) at the time of admission to the agency for evaluation or treatment. The person receiving this notice must acknowledge in writing the receipt of the notice and this written acknowledgement must be retained in the person’s comprehensive clinical record. T/RBHAs, T/RBHA subcontracted providers and the AzSH shall post ADHS Form MH-211, in both English and Spanish, so that it is readily visible to persons visiting the agency.
 - iii. The T/RBHA, the AzSH, or ADHS/DBHS when making a decision on behalf of the Tribal RBHA, shall provide a “Notice of Decision and Right to Appeal” [PM Form 5.5.1, Notice of Decision and Right to Appeal](#) when:
 - 1. Initial eligibility for SMI services is determined. The notice must be sent within three days of the eligibility determination;
 - 2. A decision is made regarding fees or waivers thereof;
 - 3. An assessment report, Service Plan or Inpatient Treatment and Discharge Plan is developed, provided or reviewed;
 - 4. A decision is made to modify the service plan or to deny, reduce, suspend or terminate a service that is a non-Title XIX/XXI covered service. Notice shall be provided at least 30 days prior to the effective date of the change unless the person agrees to the change in writing 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;
 - 5. A decision is made that the person is no longer eligible for SMI services; or
 - 6. A PASRR determination, in the context of either a preadmission screening or an annual resident review, which adversely affects the person.
 - iv. Every T/RBHA, T/RBHA subcontracted provider and the AzSH shall post [ADHS Form MH-209, “Discrimination Prohibited”](#), in both English and Spanish, so that it is readily visible to persons visiting the agency and shall provide a copy of this form to the person at the time of discharge from the agency.
- d. Notices for Non-SMI/Non-Title XIX/XXI populations
 - i. Notice is not required to persons who are not eligible for Title XIX/XXI or SMI services for service decisions under this policy.
- e. Appeal Requirements
 - i. Agency Responsible for Processing Appeals
 - 1. Each RBHA is responsible for processing appeals pursuant to the requirements described within this policy. The processing of appeals shall not be delegated by the RBHA.



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2. Throughout this policy, whenever there is a reference to the RBHA, the AzSH shall have the same responsibility when the appeal is filed with the AzSH and concerns service decisions made by the AzSH.
3. Upon request, the RBHA shall provide assistance in explaining the appeal process or in reducing the appeal in writing to the appropriate appeal form.
- ii. Time frames for Filing an Appeal
 1. Appeals must be filed orally or in writing with the responsible RBHA within 60 days from the date of the decision being appealed. Late appeals shall be accepted upon a showing of good cause.
- iii. Extension of Appeal Timeframes
 1. An extension of the appeal timeframes required in this policy may be secured either at the request of the appellant or with the permission of the RBHA Director or ADHS/DBHS Director or designee. An extension of time may only be approved upon a showing of necessity and upon a showing that the delay will not pose a threat to the safety or security of the behavioral health recipient. Documentation of the reason for and approval of the extension of time must be maintained in the appeal case record.
- iv. Who May File an Appeal
 1. An adult applying for or receiving services, their legal guardian, guardian ad litem, designated representative or attorney and for persons identified as in need of Special Assistance, this includes the person designated to meet the Special Assistance needs;
 2. A legal guardian or parent who is the legal custodian of a person under the age of 18 years or a designated representative;
 - a. A court appointed guardian ad litem or an attorney of a person under the age of 18 years;
 3. A state or governmental agency that has executed an Intergovernmental Agreement/Interagency Service Agreement (IGA/ISA) with ADHS for the provision of behavioral health services to persons served by the governmental agency, but which does not have legal custody or control of the person shall have appeal rights to the extent specified in the ISA/IGA between the agency and the ADHS; or
 4. A provider, acting on the behavioral health recipient's behalf and with the written authorization of the person.
- f. Case Docketing Requirements
 - i. The RBHA shall use the unique ADHS/DBHS Docket Number auto-generated by the OGA database for each appeal filed. The file and all correspondence generated shall reference the ADHS/DBHS Docket Number.
- g. Examination of Appeal Case Record
 - i. Upon request, the appellant shall be given an opportunity to examine the contents of the appeal case record. In addition, ADHS/DBHS or the RBHA must give the appellant an opportunity to examine all documents and records to be used at an informal conference and administrative hearing. ADHS/DBHS or the RBHA may deny access to clinical records contained in the appeal case record if permitted by State and Federal law.



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- h. Appeal Case Records
 - i. The RBHA will maintain appeal case records in the following manner:
 - 1. All documentation received for entry into the appeal case record will be date stamped on the day received.
 - 2. An appeal case record shall be maintained for each request to file an appeal. The case record shall include:
 - a. An ADHS/DBHS docket number;
 - b. The original request for appeal, if the appeal was filed orally or the appeal is not on the [ADHS/DBHS Appeal or SMI Grievance Form](#), the form shall be completed by the RBHA for each appeal filed;
 - c. Copies of all documents generated or acquired through the appeal process; and
 - d. The RBHA and ADHS/DBHS shall maintain all records pertaining to an appeal in a secure and locked place until the appellant's administrative and legal remedies are exhausted or time allowed for an appeal has expired. Thereafter, ADHS/DBHS and the RBHA must maintain all appeal files in a secure designated area and retain for at least five years.
 - i. Standard and Burden of Proof
 - i. The standard of proof on all issues on appeal shall be the preponderance of the evidence.
 - ii. The burden of proof for all issues on appeal is on the individual or agency appealing (see [AAC R9-21-401](#) for limited exceptions).
 - j. Appeal Process for Persons with a Serious Mental Illness
 - i. The appeal process for persons with a SMI applies to all persons who have been determined SMI eligible and to persons disputing an SMI eligibility determination.
Title XIX/XX eligible persons with a SMI who are appealing an action (see definition) affecting Title XIX/Title XXI covered services may elect to use either the Title XIX/XXI appeal process (see [NARBHA Policy 5.1 Notice Requirements for Title XIX and Title XXI Eligible Persons](#)) or the appeal process for persons with a SMI.
 - ii. An appeal may be filed for one or more of the following:
 - 1. Decisions regarding the person's SMI eligibility determination;
 - 2. Sufficiency or appropriateness of the assessment;
 - 3. Long-term view, service goals, objectives or timelines stated in the Individual Service Plan (ISP) or Inpatient Treatment and Discharge Plan (ITDP);
 - 4. Recommended services identified in the assessment report, SP or ITDP;
 - 5. Actual services to be provided, as described in the ISP, plan for interim services or ITDP;
 - 6. Access to or prompt provision of services;
 - 7. Findings of the clinical team with regard to the person's competency, capacity to make decisions, need for guardianship or other protective services or need for Special Assistance;



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8. Denial of a request for a review of, the outcome of, a modification to or failure to modify, or termination of an SP, ITDP or portion of an ISP or ITDP;
 9. Application of the procedures and timeframes for developing the ISP or ITDP;
 10. Implementation of the ISP or ITDP;
 11. Decision to provide service planning, including the provision of assessment or case management services to a person who is refusing such services, or a decision not to provide such services to the person;
 12. Decisions regarding a person's fee assessment or the denial of a request for a waiver of fees;
 13. Denial of payment of a claim;
 14. Failure of the RBHA or ADHS/DBHS to act within the timeframes regarding an appeal; or
 15. A PASRR determination, in the context of either a preadmission screening or an annual resident review, which adversely affects the person.
- k. Continuation of SMI services
- i. If the appeal relates to the modification or termination of a behavioral health service, the service under appeal shall continue pending the resolution of the appeal through the final agency decision, unless:
 1. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the person or another individual; or
 2. The person or guardian, if applicable, agrees in writing to the modification or termination.
- l. Standard Appeal Process
- i. Within 5 working days of receipt of an appeal, the RBHA must inform the appellant in writing that the appeal has been received and of the procedures that will be followed during the appeal.
 - ii. In the event the RBHA refuses to accept a late appeal or determines that the issue may not be appealed⁴, the RBHA must inform the appellant in writing that they may, within 10 days of their receipt of the RBHA decision, request an Administrative Review of the decision with the ADHS/DBHS OGA.
 - iii. If a timely request for Administrative Review is filed with ADHS/DBHS of the RBHA's decision in l.ii. above, ADHS/DBHS shall issue a final decision of within 15 days of the request (for persons requiring Special Assistance, see [NARBHA Policy 5.4 Special Assistance for Persons Determined to have a Serious Mental Illness \(SMI\)](#)).
- m. Informal Conference with the RBHA
- i. Within seven days of receipt of an appeal, the RBHA shall hold an informal conference with the person, guardian, any designated representative, case manager or other representative of the service provider, if appropriate.
 - ii. The RBHA must schedule the conference at a convenient time and place and inform all participants in writing, two days prior to the conference, of the time,



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- date and location, the ability to participate in the conference by telephone or teleconference, and the appellant's right to be represented by a designated representative of the appellant's choice.
- iii. The informal conference shall be chaired by a representative of the RBHA with authority to resolve the issues under appeal, who shall seek to mediate and resolve the issues in dispute.
 - iv. The RBHA representative shall record a statement of the nature of the appeal, the issues involved, any resolution(s) achieved, the date by which the resolution(s) will be implemented, and identify any unresolved issues for further appeal.
 - v. If the issues in dispute are resolved to the satisfaction of the person or guardian, if applicable, the RBHA shall issue a dated written notice to all parties, which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
 - vi. If the issues in dispute are not resolved to the satisfaction of the person or guardian and the issues in dispute do not relate to the person's eligibility for behavioral health services, the person or guardian shall be informed that the matter will be forwarded for further appeal to ADHS/DBHS for informal conference, and of the procedure for requesting a waiver of the ADHS/DBHS informal conference.
 - vii. If the issues in dispute are not resolved to the satisfaction of the person or guardian and the issues in dispute relate to the person's eligibility for SMI services or the person or guardian has requested a waiver of the ADHS/DBHS informal conference in writing, the RBHA shall:
 1. Provide written notice to the person or guardian of the process to request an administrative hearing.
 2. Determine at the informal conference whether the person or guardian is requesting the RBHA to request an administrative hearing on behalf of the person or guardian and, if so, file the request with ADHS/DBHS within 3 days of the informal conference.
 3. For a person who is in need of special assistance, send a copy of the appeal, results of information conference and notice of administrative hearing referenced in section 3.m.vi.(1) to the Office of Human Rights (OHR).
 4. In the event the person appealing fails to attend the informal conference and fails to notify the RBHA of their inability to attend prior to the scheduled conference, the RBHA shall reschedule the conference in accordance with the requirements of section 3.m.vi., above. If the person appealing fails to attend the rescheduled conference and fails to notify the RBHA of their inability to attend prior to the rescheduled conference, the RBHA shall close the appeal docket and send written notice of the closure to the person appealing.
 - a. In the event the appellant requests the appeal be re-opened due to not receiving the informal conference notification and/or due to good cause, the RBHA can re-open the appeal and proceed with the informal conference.



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5. For all appeals unresolved after an informal conference with the RBHA, the RBHA must forward the appeal case record to the ADHS/DBHS OGA within three days from the conclusion of the informal conference.
- n. ADHS/DBHS Informal Conference
- i. Unless the person or guardian waives an informal conference with ADHS/DBHS, or the issue on appeal relates to eligibility for SMI services, ADHS/DBHS shall hold a second informal conference within 15 days of the notification from the RBHA that the appeal was unresolved.
 1. At least five days prior to the date of the second informal conference, ADHS/DBHS shall notify the participants in writing of the date, time and location of the conference.
 2. The informal conference shall be chaired by a representative of ADHS/DBHS with authority to resolve the issues under appeal who shall seek to mediate and resolve the issues in dispute.
 3. The ADHS/DBHS representative shall record a statement of the nature of the appeal, the issues involved, any resolution(s) achieved, the date by which the resolution(s) will be implemented, and identify any unresolved issues for further appeal.
 4. If the issues in dispute are resolved to the satisfaction of the person or guardian, ADHS/DBHS shall issue a dated written notice to all parties, which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
 - a. For a person in need of Special Assistance, ADHS/DBHS shall send a copy of the informal conference report to the OHR.
 5. If the issues in dispute are not resolved to the satisfaction of the person or guardian, ADHS/DBHS shall:
 - a. Provide written notice to the person or guardian of the process to request an administrative hearing.
 - b. Determine at the informal conference whether the person or guardian is requesting ADHS/DBHS to request an administrative hearing on behalf of the person or guardian and, if so, file the request within 3 days of the informal conference.
 - c. For a person who is in need of Special Assistance, send a copy of the notice in 3.n.i.5)(a) to the OHR.
 - d. In the event the person appealing fails to attend the informal conference and fails to notify ADHS/DBHS of their inability to attend prior to the scheduled conference, ADHS/DBHS may issue a written notice, within 3 working days of the scheduled conference, which contains a description of the decision on the issue under appeal and which advises the appellant of their right to request an Administrative Hearing.
 - e. In the event the appellant requests the appeal be re-opened due to not receiving the informal conference notification and/or due to good cause, the ADHS/DBHS can re-open the appeal and proceed with the informal conference.



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- o. Requests for Administrative Hearing
 - i. A written request for hearing filed with ADHS must contain the following information:
 - 1. Case name (name of the applicant or person receiving services, name of the appellant and the ADHS/DBHS docket number);
 - 2. The decision being appealed;
 - 3. The date of the decision being appealed; and
 - 4. The reason for the appeal.
 - ii. In the event a request for administrative hearing is filed with the RBHA, the RBHA shall ensure that the written request for hearing, appeal case record and all supporting documentation is received by the ADHS/DBHS OG A within 3 days from such date.
 - iii. Administrative hearings shall be conducted and decided pursuant to [A.R.S. § 41-1092 et seq.](#)
- p. Expedited Appeals
 - i. At the time an appeal is initiated, the applicant, person or provider on a person's behalf may request an expedited appeal in writing. The RBHA shall accept requests to expedite an appeal for good cause, and for the following:
 - 1. The denial of admission to or the termination of a continuation of inpatient services; or
 - 2. A denial or termination of crisis or emergency services.
 - ii. Within one day of receipt of a request for an expedited appeal, the RBHA must inform the appellant in writing that the appeal has been received and of the time, date and location of the informal conference; or
 - iii. Issue a written decision stating that the appeal does not meet criteria as an expedited appeal and that the appellant may request an Administrative Review from ADHS/DBHS of this decision within 3 days of the decision. The appeal shall then proceed according to the standard process as described in Section F.12. of this policy.
 - v. If the person or their guardian requests an Administrative Review on a timely basis the RBHA's decision in 3.p.iii., ADHS/DBHS shall complete the review and issue a written decision within 1 day from the date of receipt. The decision of ADHS/DBHS shall be final.
- q. RBHA Expedited Informal Conference
 - i. Within two days of receipt of a written request for an expedited appeal, the RBHA shall hold an informal conference in accordance with applicable provisions of section 3.m. of this policy to mediate and resolve the issues in dispute.
- r. ADHS/DBHS Expedited Informal Conference
 - i. Within two days of notification from the RBHA, ADHS/DBHS shall hold an informal conference in accordance with applicable provisions of section 3.n. of this policy to mediate and resolve the issue in dispute, unless the appellant waives the conference at this level, in which case the appeal shall be forwarded within one day to the ADHS Director to schedule an administrative hearing.



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- ii. Within one day of the informal conference with ADHS/DBHS, if the conference failed to resolve the appeal, the appeal shall be forwarded to the ADHS Director to schedule an administrative hearing.

- s. Requests for Administrative Hearing
 - i. A written request for hearing filed with ADHS must contain the following information:
 - 1. Case name (name of the applicant or person receiving services, name of the appellant and the ADHS/DBHS docket number);
 - 2. The decision being appealed;
 - 3. The date of the decision being appealed; and
 - 4. The reason for the appeal.
 - ii. In the event a request for administrative hearing is filed with the RBHA, the RBHA shall ensure that the written request for hearing, appeal case record and all supporting documentation is received by the ADHS/DBHS OG A within three days.
 - iii. Administrative hearings shall be conducted and decided pursuant to A.R.S. §41-1092 et seq.

- t. Non-SMI/Non-Title XIX/XXI Member Appeals
 - i. This process applies to actions or decisions related to determination of need for Non-SMI, Non-Title XIX/XXI funded, covered behavioral health services.
 - ii. The RBHA in processing the appeal, must:
 - 1. Inform the appellant in writing within 5 working days of receipt that the appeal has been received and of the procedures that will be followed during the appeal;
 - 2. Provide the appellant a reasonable opportunity to present evidence and allegations of fact or law in person and in writing; and
 - 3. Provide a written decision no later than 30 days from the day the appeal is received. The decision shall include a summary of the issues involved, the outcome of the appeal, and the basis of the decision. For appeals not resolved wholly in favor of the appellant, the RBHA shall advise the appellant in writing of their right to request an administrative hearing with ADHS no later than 30 days from the date of the RBHA's decision, and how to do so.
 - iii. Requests for Administrative Hearing
 - 1. A written request for hearing filed with ADHS must contain the following information:
 - a. Case name (name of the applicant or person receiving services, name of the appellant and the ADHS/DBHS docket number);
 - b. The decision being appealed;
 - c. The date of the decision being appealed; and
 - d. The reason for the appeal.
 - 2. In the event a request for administrative hearing is filed with the RBHA, the RBHA shall ensure that the written request for hearing, appeal case record and all supporting documentation is received by ADHS/DBHS OGA within 3 days.



Where must appeals be directed?

- For oral appeals to the RBHA: Call **NARBHA** at this toll free telephone: **877-923-1400**
- To submit a written appeal to the RBHA: Mail the appeal to **NARBHA** at NARBHA Grievance & Appeals, 1300 S. Yale St., Flagstaff AZ 86001
- To FAX an appeal to the RBHA: Fax the appeal to NARBHA at 855-408-3400.
- 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.
- To FAX an appeal to ADHS/DBHS: FAX the appeal to (602) 364-4591.

5.5.4 References

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

[A.R.S. §1-254](#)

[A.R.S. §36-502.D](#)

[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 3.6, Member Handbook](#)

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

[Section 5.2, Member Complaints](#)

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

[Section 5.4, Special Assistance for Persons Determined to have a Serious Mental Illness \(SMI\)](#)

[Section 5.6, Provider Claims Disputes](#)

5.5.5 PM Forms

[PM Form 5.5.1 Notice of Decision and Right to Appeal](#)

[PM Form 5.5.2 Process for Provider Appeals](#)

[PM Form ADHS MH-209 Notice of Discrimination Prohibited](#)

[PM Form ADHS MH-211 Notice of Legal Rights for SMI](#)

5.5.6 PM Attachments

[PM Attachment 5.5.1 ADHS/DBHS Notice of SMI Grievance and Appeal Procedure](#)

