



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Health Care Authority

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

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

- Yes
 - No
- If Yes, explain:

Purpose:

The agency is revising this section to include standard resolution of appeals for noncrisis services provided by the Behavioral Health–Administrative Services Organization (BH-ASO) and to more fully describe the timing for both expedited and standard resolution notices.

Citation of existing rules affected by this order:

Repealed:
 Amended: 182-538C-110
 Suspended:

Statutory authority for adoption: RCW 41.05.021, RCW 41.05.160

Other authority :

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

The agency must continue to revise WAC 182-538C-110 to include rules for standard resolution of appeals for noncrisis services provided by the BH-ASO and to more fully describe the timing for both expedited and standard resolution notices. The agency filed the permanent rulemaking under WSR 16-12-090 on July 13, 2016. This filing is necessary to continue the emergency rule filed under WSR 16-08-031 until the permanent rules become effective on August 13, 2016.

Date adopted: July 25, 2016

NAME (TYPE OR PRINT)
Wendy Barcus

SIGNATURE

TITLE
HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 25, 2016
TIME: 8:14 AM

WSR 16-16-029

(COMPLETE REVERSE SIDE)

**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	_____	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	<u>1</u>	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>1</u>	Repealed	_____

WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs). (1) This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for individuals within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow an individual to file a grievance and seek review of a BH-ASO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an individual to review resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(2) The BH-ASO grievance system. The BH-ASO grievance system includes:

(a) A process for addressing a complaint about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an individual's request for review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for an individual to seek review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

(a) An individual or an individual's authorized representative may file a complaint with a BH-ASO. A provider may not file a complaint on behalf of an individual without written consent.

(b) There is no right to an administrative hearing in regards to the disposition of a complaint.

(c) The BH-ASO must notify individuals of the disposition of grievances within five business days of determination.

(4) The BH-ASO appeals process.

(a) An individual, the individual's authorized representative, or the provider acting with the individual's written consent may appeal a BH-ASO action.

(b) A BH-ASO must treat oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The oral appeal must be confirmed in writing by the BH-ASO.

(c) The individual or provider acting on behalf of the individual must file an appeal, either orally or in writing, within ninety calendar days of the date on the BH-ASO's notice of action.

(d)(i) The BH-ASO must acknowledge receipt of each appeal to both the individual and the provider requesting the service within three calendar days. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by an individual.

~~((d) An appeal of a BH-ASO action must be filed within ninety calendar days of the date of the notice of action.))~~

(ii) If the individual requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on the individual's request for expedited appeal and provide written notice as expeditiously as the individual's health condition requires, within three calendar days after the BH-ASO receives the appeal. The BH-ASO must make reasonable efforts to provide oral notice.

- (e) The BH-ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.
- (f) The BH-ASO appeals process:
- (i) Provides the individual a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing. The BH-ASO must inform the individual of the limited time available for this in the case of expedited resolution;
- (ii) Provides the individual and the individual's authorized representative opportunity before and during the appeals process to examine the individual's case file, including medical records and any other documents and records considered during the appeals process; and
- (iii) Includes as parties to the appeal:
- (A) The individual;
- (B) The individual's legal representative; or
- (C) The authorized representative of the deceased individual's estate.
- (g) The BH-ASO ensures the individuals making decisions on appeals:
- (i) Were not involved in any previous level of review or decision making; and
- (ii) Are health care professionals with appropriate clinical expertise in treating the individual's condition or disease if deciding any of the following:
- (A) An appeal of an action; or
- (B) A grievance or appeal that involves any clinical issues.
- (h) Time frames for resolution of appeals.
- (i) ~~((A BH ASO resolves each appeal and provides notice as expeditiously as the individual's health condition requires and no longer than three calendar days after the BH ASO receives the appeal.~~
- (ii)) For standard resolution of appeals and for appeals for termination, suspension, or reduction of previously authorized noncrisis services, a decision must be made within fourteen calendar days after receipt of the appeal.
- (ii) If a standard resolution of an appeal cannot be made within fourteen calendar days after receipt of the appeal, the BH-ASO must notify the individual that an extension is necessary to complete the appeal.
- (i) For any extension not requested by the individual, including expedited appeals, the BH-ASO must give the individual written notice of the reason for the delay.
- (i) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the individual.
- (ii) In all circumstances, the appeal determination must not be extended beyond forty-five calendar days from the day the BH-ASO receives the appeal request.
- (iii) For expedited resolution of crisis-related appeals or appeals of behavioral health drug authorization decisions, including notice to the affected parties, the BH-ASO shall resolve and provide notice no longer than three calendar days after the BH-ASO receives the appeal.
- (iv) The BH-ASO may extend the time frame by fourteen additional calendar days if:
- (A) The individual requests the extension; or
- (B) The BH-ASO determines additional information is needed and the delay is in the interests of the individual.

((i)) (C) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must transfer the appeal to the time frame for standard resolution 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 of denial.

(j) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the individual and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an administrative hearing and how to do so as provided in the agency hearing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the individual.

(5) Administrative hearings.

(a) Only an individual or an individual's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an individual.

(b) If an individual does not agree with the BH-ASO's resolution of an appeal, the individual may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) An individual must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.

(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed by the BH-ASO on appeal or through a final order from the administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the individual's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding regardless of medical necessity.