

**DBHR Guidance Document #04-17**  
**Code of Federal Regulations Change and Notice of Adverse Benefit Determinations**  
**Effective 07/01/17**

*The purpose of this guidance document is to highlight recent changes to the Code of Federal Regulations (CFR), 42 C.F.R. §438.400, and explain how these changes will impact Notice of Adverse Benefit Determinations issued by the Behavioral Health Organizations.*

**How does the recent change to the Code of Federal Regulations (CFR) impact Notice of Adverse Benefit Determinations (formerly Notice of Actions)?**

Effective July 1, 2017, the term “Notice of Action” is changed to “Notice of Adverse Benefit Determination.” In addition, language has been added to the definition for a denial or limited authorization of a requested service. Under the amended federal rule, a denial by the Prepaid Inpatient Health Plan (PIHP) requiring a Notice of Adverse Benefit Determination is defined as “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.” ([42 CFR § 438.400\(b\)](#)) DBHR is amending state rules in chapters 388-877 WAC to conform to this federal rule requirement.

**How does the definition of an Adverse Benefit Determination impact authorization decisions made by a Behavioral Health Organization (BHO)?**

BHOs that choose to have specific authorization types that identify and designate a distinct level of care for Medicaid services as outlined in the State Plan will need to issue an Adverse Benefit Determination to individuals who are requesting a specific level of service and who at assessment are determined to not qualify for that level of care.

An example of a specific authorization type would be a tiered authorization system that utilizes the Level of Care Utilization System (LOCUS) or Child and Adolescent Level of Care Utilization System (CALOCUS) decision tool in conjunction with an assessment to determine medical necessity. Another example of a designated authorization type would be an authorization that denotes a tiered system, such as Level 1 and Level 2 mental health outpatient services. The commonality is that the authorization issued by the BHO would specify a level or intensity of care.

**Are Notices of Adverse Benefit Determination required for authorization decisions for substance use disorder services and level of care decisions using the ASAM criteria?**

If the BHO has specific authorization types that identify and designate levels of care (i.e. residential, intensive outpatient, outpatient), then an Adverse Benefit Determination would need to be provided to individuals who are denied a level of care he or she is requesting.

**Are Notices of Adverse Benefit Determination required for authorization decisions for Program for Assertive Community Treatment (PACT)? PACT is paid for by a blend of Medicaid and state dollars, so would notice requirements still apply?**

If the BHO has a specific authorization type for PACT that designates a level of care, then an Adverse Benefit Determination would need to be provided to individuals who are requesting that level of care and who are denied. The blend of Medicaid and state funds is not the deciding factor, but rather if the BHO has established an authorization type designating PACT as a specific level of care within their care network.

**Are Notices of Adverse Benefit Determination required for authorization decisions for Wraparound with Intensive Services (WISe)?**

Ensuring that individuals, youth, and parents are properly notified of their rights to due process is a foundational component of the *T.R.* settlement agreement. Therefore, to ensure proper notice, starting July 1, 2017, DBHR will require Notice of Adverse Benefit Determinations be issued anytime WISe services are denied. The Child and Adolescent Needs and Strengths (CANS) screen combined with an intake or continued stay evaluation for behavioral health services establishes the presence of medical necessity for WISe. If WISe services are requested by the youth (and parent if youth is under age 13) and the youth is denied WISe or authorization is limited, a Notice of Adverse Benefit Determination must be issued.

**What if Child and Adolescent Needs and Strengths (CANS) screen is completed and not paired with an assessment? Is an Adverse Benefit Determination needed?**

Yes. If a CANS screen is requested by a youth (or parent or guardian if the youth is under age 13), and the outcome of the screen does not meet the algorithm, a Notice of Adverse Benefit Determination must be issued by the BHO.

**Are Notices required for non-Medicaid services?**

Under the federal rule, Notice of Adverse Benefit Determinations apply to Prepaid Inpatient Health Plan (PIHP) for Medicaid funded services. For denial of non-Medicaid services, a Notice of Determination must be provided to individuals to communicate a denial or limited authorization of a non-Medicaid service offered by the BHO. Please see the Behavioral Health State Contract (BHSC) for additional details regarding Notice of Determinations.

**Is a Notice of Adverse Benefit Determination required when an individual disagrees with a specific service or treatment decision?**

For non-WISe enrolled individuals:

Once medical necessity is established and services are authorized, ongoing treatment decisions should be mutually agreed upon between the individual and the service provider during the Individual Service Planning process. Notices are NOT needed for an ongoing treatment decision mutually agreed upon by the client and the provider. However, if the client files a grievance at the BHO level expressing dissatisfaction with a treatment decision, the BHO upholds the decision, and the decision is a denial, reduction, suspension, or termination of a previously authorized service, then the grievance is treated as an appeal and a Notice of Adverse Benefit Determination must be issued.

For WISe enrolled individuals:

The *T.R.* settlement agreement provides an additional due process right for individuals receiving Wraparound with Intensive Services (WISe) beyond those required by the CFR. Notices are *NOT* needed for an ongoing treatment decision that is mutually agreed upon by the client and the provider. However, if a WISe enrolled youth (or parent or guardian if the youth is under age 13) expresses any dissatisfaction with a treatment decision or the individual service plan to the BHO, then the grievance is immediately treated as an appeal (regardless if the BHO upholds the decision) and a Notice of Adverse Benefit Determination must be issued.