



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Health Care Authority, Washington Apple Health

- Preproposal Statement of Inquiry was filed as WSR 16-08-032; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information:

182-538C-110, Grievance system for behavioral health administrative services organizations (BH-ASOs)

Hearing location:

Health Care Authority
Cherry Street Plaza Building; Sue Crystal Conf Rm 106A
626 - 8th Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:
http://www.hca.wa.gov/documents/directions_to_csp.pdf
or directions can be obtained by calling: (360) 725-1000

Date: **July 5, 2016** Time: **10:00 a.m.**

Date of intended adoption: Not sooner than July 6, 2016
(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator
Address: PO Box 45504, Olympia WA, 98504-5504
Delivery: 626 – 8th Avenue, Olympia WA 98504
e-mail arc@hca.wa.gov
fax (360) 586-9727

by **5:00 pm on July 5, 2016**

Assistance for persons with disabilities: Contact Amber Lougheed by July 1, 2016
e-mail: amber.lougheed@hca.wa.gov or (360) 725-1349
TTY (800) 848-5429 or 711

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

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.

Reasons supporting proposal: See Purpose.

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
May 31, 2016

NAME
Wendy Barcus

SIGNATURE

TITLE
HCA Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 31, 2016

TIME: 1:48 PM

WSR 16-12-090

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: Health Care Authority

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Sean Sullivan	PO Box 42716, Olympia WA, 98504-2716	(360) 725-1344
Implementation.... Becky McAninch-Dake	PO Box 45530, Olympia WA, 98504-5530	(360) 725-1642
Enforcement..... Becky McAninch-Dake	PO Box 45530, Olympia WA, 98504-5530	(360) 725-1642

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

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))~~ people within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow ~~((an individual))~~ a person to file a grievance and ~~((seek))~~ request a 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))~~ a person to review the 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.

(e) The BH-ASO is not obligated to continue services pending the results of an appeal or subsequent administrative hearing.

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

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

(b) An appeals process to address ~~((an individual's))~~ a person's request for a 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))~~ a person to request a review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

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

(b) There is no right to an agency administrative hearing ~~((in regards to the disposition of a complaint))~~ regarding the BH-ASO's decision on a grievance, since a grievance is not an action.

(c) The BH-ASO must notify ~~((individuals))~~ a person of the ~~((disposition of))~~ decision regarding the person's grievance~~((s))~~ within five business days of ~~((determination))~~ the decision.

(4) The BH-ASO appeals process.

(a) ~~((An individual, the individual's))~~ Parties to the appeal include:

(i) The person and the person's authorized or legal representative; or

(ii) The authorized representative of the deceased person's estate.

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

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

(d) The BH-ASO must confirm any oral appeal ((must be confirmed)) in writing ((by the BH-ASO.

~~(e))~~ to the person or provider acting on behalf of the person.

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

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

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

~~(e) The BH ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.~~

~~(f))~~ (g) If the person requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on whether to grant the person's request for expedited appeal and provide written notice as expeditiously as the person'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.

(h) The BH-ASO appeals process:

(i) Provides the ((individual)) person a reasonable opportunity to present evidence and allegations of fact or law(, both in person and) in writing(,).

(ii) Provides the ((individual)) person and the ((individual's)) person's authorized representative opportunity before and during the appeals process to examine the ((individual's)) person'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))~~.

(iii) If the person requests an expedited appeal, the BH-ASO must inform the person that it may result in the person having limited time to review records and prepare for the appeal.

(i) The BH-ASO ensures the ((individuals)) staff 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)) person's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) ((A grievance or)) An appeal that involves any clinical issues.

~~((h))~~ (j) Time frames for standard 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) 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)) For appeals involving termination, suspension, or reduction of previously authorized noncrisis services, the BH-ASO must make a decision within fourteen calendar days after receipt of the appeal.

(ii) If the BH-ASO cannot resolve an appeal within fourteen calendar days, the BH-ASO must notify the person that an extension is necessary to complete the appeal.

(k) Time frames for expedited appeals for crisis-related services or behavioral health prescription drug authorization decisions.

(i) The BH-ASO must resolve the expedited appeal and provide notice of the decision no later than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The person requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the person.

(iii) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must:

(A) Process the appeal based on the time frame for standard resolution;

(B) Make reasonable efforts to give the person prompt oral notice of the denial; and

(C) Follow-up within two calendar days of the oral notice with a written notice of denial.

(l) Extension of a standard resolution or expedited appeal not requested by the person.

(i) The BH-ASO must notify the person in writing of the reason for the delay, if not requested by that person.

(ii) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the person.

(iii) The appeal determination must not exceed forty-five calendar days from the day the BH-ASO receives the appeal.

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

(i) Be in writing and be sent to the ((individual)) person 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 agency 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)) person.

(5) Agency administrative hearings.

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

(b) If ((an individual)) a person does not agree with the BH-ASO's resolution of an appeal, the ((individual)) person 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 agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) (~~An individual~~) A person 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 on appeal by the BH-ASO (~~on appeal~~) or through a final order from the agency administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the (~~individual's~~) person'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.