



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Social and Health Services, Behavioral Health and Service Integration Administration

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes
  - No
- If Yes, explain:

**Purpose:**

The new rules inform individuals applying for, eligible for, or receiving mental health services of their right to express dissatisfaction regarding a mental health service and how to use the Regional Support Network's (RSN's) grievance system. The rules inform consumers of behavioral health services how to use the Division of Behavioral Health and Recovery's (DBHR's) complaint process, and update and clarify individual rights specific to the Medicaid program. The department is repealing WAC 388-865-0255 that is outdated due to these new rules.

**Citation of existing rules affected by this order:**

- Repealed: WAC 388-865-0255
- Amended: None
- Suspended: None

**Statutory authority for adoption:**

Chapter 49.60 RCW, RCW 71.05.560, RCW 71.24.035(5)(c), and RCW 71.34.380; 42 CFR §438.400. Note: The Centers for Medicaid & Medicaid Services (CMS) has proposed rule changes for 42 CFR Parts 431, 433, 438, 440, 457 and 495 that will affect Medicaid Managed Care Regulations. The Department anticipates future amendments to these WAC sections when the proposed CMS rules become final.

**Other authority :** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 15-03-057 on January 15, 2015 (date).  
Describe any changes other than editing from proposed to adopted version. See Attachment A.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Date adopted:**

June 25, 2015

**NAME (TYPE OR PRINT)**

Kevin Quigley

**SIGNATURE**

**TITLE**

Secretary, Department of Social and Health Services

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: June 25, 2015**

**TIME: 3:36 PM**

**WSR 15-14-058**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>8</u>	Amended	_____	Repealed	<u>1</u>

**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	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>8</u>	Amended	_____	Repealed	<u>1</u>

WAC 388-877A-0410(1)(e) The failure of an RSN...within the grievance system timeframes as provided in ~~section 42 CFR 438.408(b)~~ WAC 388-877A-0420 through 388-877A-0450.

WAC 388-877A-0410(3) "Appeal" means a an oral or written...for the regional support network (RSN) to ~~reconsider~~ review an "action,"...

WAC 388-877A-0410(4) "Appeal process" is...to appeal a ~~decision~~ an action made...

WAC 388-877A-0410(5) "Expedited appeal process" allows...that will be reviewed ~~more quickly~~ by the regional support network (RSN) more quickly than a standard appeal.

WAC 388-877A-0410(9)(a) In the case of a minor, The the individual's...

WAC 388-877A-0420(3)(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance is filed first with the behavioral health agency and the individual is not satisfied with the agency's written decision is adverse to the individual on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (5) of this section, the individual may then choose to file the grievance with the RSN. If the individual is not satisfied with the RSN's written decision on the grievance, or if the individual does not receive a copy of the decision from the RSN within the time required under subsection (5) of this section, ~~RSN's written decision is adverse to the individual,~~ the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it.

WAC 388-877A-0420(3)(b) If the individual first files a grievance is filed first with the RSN (and not the agency), and the individual either is not satisfied with the RSN's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (5) of this section, ~~is adverse to the individual,~~ the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from an RSN, the individual but cannot file the same grievance with the behavioral health agency, that contracts with the RSN even if that agency or its staff member(s) is the subject of the grievance.

WAC 388-877A-0420(5)(d) Send the individual who filed the grievance a written notice...

WAC 388-877A-0420(6)(b) The individual's right...of the grievance and, if applicable, through subsequent steps of the grievance system.

WAC 388-877A-0420(6)(e) That the individual...representative, ~~are mailed~~ receive a written notice...

WAC 388-877A-0420(6)(e)(ii) By the agency...demonstrate that it needs additional information and that the added...

WAC 388-877A-0420(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained...

WAC 388-877A-0430(1) The regional support network... (1) (a) The action... (2) (b) The reason... (3) ~~(c)~~...The individual's right... (4) (d) The circumstances... (5) ~~(e)~~ The individual's right...

WAC 388-877A-0440(2) The individual...review of an action:—(a) ~~M~~must file an appeal... administrative hearing; and (b) ~~May not file a grievance with the behavioral health agency or the RSN for the same issue as the appeal once an appeal has been filed.~~

WAC 388-877A-0440(3)(a) Standard as described in subsection ~~(5)~~ (6) of this section; or (b) Expedited if the criteria in subsection ~~(6)~~ (7) of this section are met.

WAC 388-877A-0440(4) The appeal process must: (a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The RSN must inform the individual of the limited time available. (b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process. (c) Include as parties to the appeal as applicable: (i) The individual. (ii) The individual's representative. (iii) The legal representative of a deceased individual's estate.

WAC 388-877A-0440(5)(b) Are mental health professionals who have appropriate clinical expertise.

WAC 388-877A-0440~~(5)~~(6)(a)(iii) The RSN must...of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution that must includes:

WAC 388-877A-0440(6)(b)(i)(A) File the appeal with the RSN on or before the later of the following: (I) ~~w~~Within ten calendar days of the date on the notice of actions; and or (II) The intended effective date of the RSN's proposed action.

WAC 388-877A-0440(6)(b)(ii)(C) Include in the notice that if the appeal decision is ~~adverse to~~ not in favor of the individual...

WAC 388-877A-0440~~(6)~~(7) **Expedited appeal process.** If an individual...an expedited appeal and resolution of the appeal can be requested. If the RSN denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, 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. (a)(i) The action taken ...is for denial of a requested service, termination, or reduction...(ii) The appeal must be filed with the RSN, either orally or in writing, within: (A) ~~†~~Ten calendar...the action if the individual is requesting continued benefits.; or (B) Twenty calendar days from the date on the RSN's written notice of action that communicated the action if the individual is not requesting continued benefits. (b) ~~The individual may ask for continued mental health services pending the outcome of the expedited appeal.~~ (b) The RSN must: (ii) Send the individual ...within two calendar three business days of receiving the request for an expedited appeal. (c) The RSN may...demonstrate that it needs additional information and that the added time is in the individual's interest.

WAC 388-877A-0440~~(7)~~(8) Duration...(b)(i) The RSN provides a written notice...that is ~~adverse to~~ not in favor of the individual;

WAC 388-877A-0440~~(8)~~(9) ...If the final...the appeal is ~~adverse to~~ not in favor of the individual, ~~(9)~~ (10) The RSN...

WAC 388-877A-0450(3)(b)(i) The decision on a notice of action must be for ~~denial, suspension~~ or termination, suspension, or reduction of the individual's...

WAC 388-877A-0450(7) If the administrative hearing decision is ~~adverse to~~ not in favor of the individual,

WAC 388-877A-0450(8) ...Chapter 34.05 RCW and chapter 388-02 WAC govern ~~the department's hearing rules~~ cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

WAC 388-877A-0460(1)(b)(xx) Request and receive...as they ~~pertain~~ relate to your rights.

WAC 388-877A-0460(1)(b)(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and...language that you understand prefer.

WAC 388-877A-0460(2)(b) Upon request, given...in an alternative ~~written~~ format...legal representative.; ~~(c) Available in alternative formats for an individual who is blind;~~ ~~(d)~~ (c) Translated...; and ~~(e)~~(d) Posted in...

WAC 388-877-0605 Any individual ~~applying for or receiving behavioral health services~~, or the individual's representative, may use the division of behavioral health and recovery's...of a behavioral health service. See WAC 388-877-0200 for...

NEW SECTION

**WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment.** (1) An individual applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN), the individual's representative, or the individual's legal guardian may access the RSN's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

- (a) A grievance process;
- (b) An appeal process; and
- (c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

- (a) The grievance process, subject to the rules in WAC 388-877A-0420; or
- (b) The appeal process, subject to the rules in WAC 388-877A-0440.

(3) Individuals may also use the free and confidential ombuds services through the RSN that contracts with the behavioral health agency in which they receive mental health services. Ombuds services are provided independent of RSNs and agency services providers, and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

- (4) See WAC 388-865-0250 for more information on ombuds services.

NEW SECTION

**WAC 388-877A-0410 Grievance system—Definitions.** The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a regional support network (RSN):

- (a) The denial or limited authorization of a requested service, including the type or level of service;
- (b) The reduction, suspension, or termination of a previously authorized service;
- (c) The denial in whole or in part, of payment for a service;
- (d) The failure to provide services in a timely manner, as defined by the state; or
- (e) The failure of an RSN or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877A-0420 through 388-877A-0450.

(2) "Administrative hearing" means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about DSHS programs and services.

(3) "Appeal" means an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the regional support network (RSN) to review an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an action made by the regional support network (RSN) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the regional support network (RSN) more quickly than a standard appeal.

(6) "Grievance" means an expression of dissatisfaction about any matter other than an action.

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a mental health service.

(8) "Grievance system" means the processes through a regional support network (RSN) in which an individual applying for, eligible for, or receiving mental health services may express dissatisfaction about services. The grievance system must be established by the RSN, must meet the requirements of 42 CFR 438 Subpart F, and include:

(a) A grievance process;

(b) An appeal process; and

(c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives regional support network (RSN)-authorized mental health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition of individual also includes the following if another person is acting on the individual's behalf:

(a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;

(b) The individual's legal guardian; or

(c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is the written notice a regional support network (RSN) provides to an individual and, if applicable, the individual's legal representative, to communicate an "action."

(11) "Regional support network (RSN)" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region. RSNs contract with behavioral health agencies to provide services.

#### NEW SECTION

**WAC 388-877A-0420 Grievance process.** (1) The grievance process is used by an individual or their representative to express dissatisfaction in person, orally, or in writing about any matter other than an action to:

(a) The behavioral health agency providing the mental health services; or

(b) The regional support network (RSN).

(2) The ombuds serving the behavioral health agency or RSN may assist the individual in resolving the grievance at the lowest possible level.

(3) Grievances are subject to the rules in this section, WAC 388-877A-0400, and WAC 388-877A-0430 through 388-877A-0460. An individual may choose to file a grievance with the behavioral health agen-

cy that provides the mental health services or with the RSN, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (5) of this section, the individual may then choose to file the grievance with the RSN. If the individual is not satisfied with the RSN's written decision on the grievance, or if the individual does not receive a copy of the decision from the RSN within the time required under subsection (5) of this section, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it.

(b) **Filing a grievance with an RSN.** If the individual first files a grievance with the RSN (and not the agency), and the individual either is not satisfied with the RSN's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (5) of this section, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from an RSN, the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance.

(4) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (5) of this section.

(5) When an individual files a grievance, the behavioral health agency or RSN receiving the grievance must:

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) Apply the rules in subsection (6) of this section; and

(d) Send the individual who filed the grievance a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(6) The behavioral health agency or RSN receiving the grievance must ensure all of the following:

(a) Other people, if the individual chooses, are allowed to participate in the grievance process.

(b) The individual's right to have currently authorized mental health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.

(c) That a grievance is resolved even if the individual is no longer receiving mental health services.

(d) That the persons who make decisions on a grievance:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, receive a written notice containing the decision within ninety days from the date a grievance is received by the agency or RSN. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or RSN when additional information is needed and the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest.

(f) That the written notice includes:

(i) The decision on the grievance;

(ii) The reason for the decision; and

(iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained and:

(i) Kept for six years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy;

(iii) Kept in confidential files separate from the individual's clinical record; and

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

#### NEW SECTION

**WAC 388-877A-0430 Notice of action.** The regional support network's (RSN's) written notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

(1) The action the RSN or its contractor (behavioral health agency) has taken or intends to take;

(2) The reason for the action and a citation of the rule(s) being implemented;

(3) The individual's right to file an appeal with the RSN and the required timeframes if the individual does not agree with the decision or action;

(4) The circumstances under which an expedited resolution is available and how to request it; and

(5) The individual's right to receive mental health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision or action.

#### NEW SECTION

**WAC 388-877A-0440 Appeal process.** (1) The appeal process is used by an individual to ask the regional support network (RSN) to review an action that the RSN has communicated to the individual on a written notice of action (see WAC 388-877A-0430). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

(2) The individual requesting review of an action must file an appeal and receive a notice of the resolution from the RSN before re-requesting an administrative hearing.

(3) The appeal process can be:

(a) Standard as described in subsection (6) of this section; or

(b) Expedited if the criteria in subsection (7) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The RSN must inform the individual of the limited time available.

(b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process.

(c) Include as parties to the appeal as applicable:

(i) The individual.

(ii) The individual's representative.

(iii) The legal representative of a deceased individual's estate.

(5) The RSN must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health professionals who have appropriate clinical expertise.

(6) **Standard appeal process.** The standard appeal process includes the following:

(a) **Standard appeals for actions communicated on a notice of action—continued services not requested.** An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The RSN must confirm receipt of the appeal in writing within five business days.

(iii) The RSN must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution must include:

(A) The RSN's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice.

(b) **Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual receiving a notice of action from the RSN that terminates, suspends, or reduces previously authorized services may file an appeal and request continuation of those services pending the RSN's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the RSN on or before the later of the following:

- (I) Within ten calendar days of the date on the notice of action;
- or
- (II) The intended effective date of the RSN's proposed action.
  - (B) Request continuation of services.
    - (ii) The RSN must:
      - (A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing;
      - (B) Send a notice in writing that follows up on any oral confirmation made; and
      - (C) Include in the notice that if the appeal decision is not in favor of the individual, the RSN may recover the cost of the mental health services provided pending the RSN's decision.
    - (iii) The RSN's written notice of the resolution must contain:
      - (A) The RSN's decision on the appeal;
      - (B) The reason for the decision; and
      - (C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:
        - (I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.
        - (II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.
- (7) **Expedited appeal process.** If an individual or the individual's mental health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal can be requested. If the RSN denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, 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.
- (a) Both of the following applies to expedited appeal requests:
    - (i) The action taken on the notice of action is for denial of a requested service, termination, suspension, or reduction of previously authorized mental health services; and
    - (ii) The appeal must be filed with the RSN, either orally or in writing, within:
      - (A) Ten calendar days from the date on the RSN's written notice of action that communicated the action if the individual is requesting continued benefits; or
      - (B) Twenty calendar days from the date on the RSN's written notice of action that communicated the action if the individual is not requesting continued benefits.
  - (b) The RSN must:
    - (i) Confirm receipt of the request for an expedited appeal in person or by telephone.
    - (ii) Send the individual a written notice of the resolution within three business days of receiving the request for an expedited appeal.
  - (c) The RSN may extend the timeframes up to fourteen additional days if the individual requests an extension or the RSN can demonstrate it needs additional information and that the added time is in the individual's interest.

(8) **Duration of continued services during the appeal process.** When an individual has requested continued mental health services pending the outcome of the appeal process and the criteria in this section have been met, the RSN ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) Ten days pass from the date on the notice of action and both of the following occur:

(i) The RSN provides a written notice of the resolution that contains a decision that is not in favor of the individual; and

(ii) The individual, within the ten-day timeframe, has not requested an administrative hearing with continuation of services.

(c) The time period of a previously authorized service has expired.

(d) A mental health treatment service limit of a previously authorized service has been fulfilled.

(9) **Recovery of the cost of mental health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the RSN may recover the cost of the mental health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(10) The RSN must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

#### NEW SECTION

**WAC 388-877A-0450 Administrative hearings.** (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC 388-877A-0410, an opportunity to be heard in disputes about a mental health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877A-0420, or the appeal process described in WAC 388-877A-0440 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or RSN at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the RSN at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following applies:

(i) The decision on a notice of action must be for termination, suspension, or reduction of the individual's mental health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the RSN that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued mental health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued mental health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the RSN continues the individual's mental health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is not in favor of the individual, the RSN may recover the cost of the mental health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

## NEW SECTION

**WAC 388-877A-0460 Individual rights specific to medicaid recipients.** (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 388-877-0600; and

(iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary mental health services, consistent with the Access to Care Standards adopted by the department in its managed care waiver with the federal government.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of mental health providers in your RSN.

(iii) Receive information about the structure and operation of the RSN.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admittance to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a mental health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change mental health care providers during the first ninety days of treatment, or first twelve months of being approved for services.

(xviii) Request and receive a copy of your medical or mental health records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the RSN and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Medically necessary services in accordance with the Early Periodic Screen, Diagnosis and Treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the regional support network (RSN), in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint.

(xxviii) A second opinion from a qualified professional within your RSN area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).

(xxix) Receive medically necessary mental health services outside of the RSN if those services cannot be provided adequately and timely within the RSN.

(xxx) File a grievance with the RSN if you are not satisfied with a service.

(xxxii) Receive a notice of action so that you may appeal any decision by the RSN that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service; or that denies payment for a service, in whole or in part.

(xxxiii) File an appeal if the RSN fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR §438.408(b).

(xxxiiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxix) Services by an ombuds to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health services must ensure the medicaid rights described in (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

## NEW SECTION

**WAC 388-877-0605 DBHR complaint process.** Any individual or the individual's representative may use the division of behavioral health and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 388-877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) The DBHR complaint manager can be contacted at 360-725-3752 or [DBHRcomplaintmgr@dshs.wa.gov](mailto:DBHRcomplaintmgr@dshs.wa.gov).

(2) Examples of complaints include, but are not limited to:

(a) An issue with a behavioral health service or case management;

(b) A possible violation of a DSHS rule; and

(c) A belief that the individual believes their rights have been or are being violated.

(3) DBHR requires the following information for each complaint:

(a) The name of the agency or agency provider involved;

(b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or time-frame it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the RSN, the agency, or agency provider.

(4) If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record and/or personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint.

(c) Conduct individual interviews with staff members and/or individuals receiving services.

(5) The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.

(6) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

(i) Restricting access to a treatment program;

(ii) Restricting access to the individual involved with the complaint issue;

(iii) Increasing or threatening to increase charges for services;

(iv) Decreasing or threatening to decrease services, rights, or privileges;

(v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and

(vi) Abusing or harassing, or threatening to abuse or harass the individual.

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

(7) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

(a) Any allegation within the complaint being substantiated; or

(b) DBHR's finding that the individual, an individual's representative, a witness, and/or employee of the agency experienced an act of retaliation by the agency as described in subsection (6) of this section during or after a complaint investigation.

(8) DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.

(9) At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the regional support network's (RSN's) grievance system, subject to the applicable rules:

(a) The grievance process, subject to the rules in WAC 388-877A-0420.

(b) The appeal process, subject to the rules in WAC 388-877A-0440.

(c) An administrative hearing, subject to the rules in WAC 388-877A-0460.

(d) Ombuds services, as described in WAC 388-877A-0400(3) and 388-865-0250.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-865-0255 Consumer grievance process.