

446 - GRIEVANCES AND INVESTIGATIONS CONCERNING PERSONS WITH SERIOUS MENTAL ILLNESS

EFFECTIVE DATES: 07/01/16, 10/01/17, 10/01/19, 03/01/21

APPROVAL DATES: 03/20/18, 05/30/19, 02/02/21

I. PURPOSE

This Policy applies to ALTCS E/PD, DES/DDD (DDD), RBHA Contractors and specifies procedures related to grievances and investigations conducted by AHCCCS and the Contractors under A.A.C. R9-21-402 et seq. concerning persons with a Serious Mental Illness (SMI).

II. DEFINITIONS

ABUSE	The infliction of, or allowing another person to inflict or cause physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency. A.A.C. R9-21-101(B).
ADMINISTRATIVE APPEAL	An appeal to AHCCCS of a decision made by a Contractor as the result of a grievance.
APPEAL	For the purposes of this Policy, a request for review of an adverse decision by a Contractor or AHCCCS.
CONDITION REQUIRING INVESTIGATION	An incident or condition that appears to be dangerous, illegal, or inhumane, including the death of a person with Serious Mental Illness.
DANGEROUS	A condition that poses or posed a danger or the potential of danger to the health or safety of a person with Serious Mental Illness.
GRIEVANCE OR REQUEST FOR INVESTIGATION	A complaint that is filed by a person with Serious Mental Illness or other concerned person alleging a violation of an SMI member's rights or a condition requiring an investigation.

ILLEGAL	An incident or occurrence that is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law.
INHUMANE	An incident, condition, or occurrence that is demeaning to a person with Serious Mental Illness or which is inconsistent with the proper regard for the right of the person to humane treatment.
MENTAL HEALTH AGENCY	Includes a regional authority, service provider, inpatient facility, an agency that conducts screening and evaluation under A.A.C. Title 9, Chapter 21, Article 5. A.A.C. R9-21-101.B.47.
PREPONDERANCE OF EVIDENCE	A standard of proof that it is more likely than not that an alleged event occurred.
SERIOUS MENTAL ILLNESS (SMI)	A condition as defined in A.R.S. §36-550 diagnosed in persons 18 years and older.
SPECIAL ASSISTANCE	The support provided to a person determined to have a Serious Mental Illness who is unable to articulate treatment preferences and/or participate effectively in the development of the Individual Service Plan (ISP), Inpatient Treatment, and Discharge Plan (ITDP), grievance and/or Appeal processes due to cognitive or intellectual impairment and/or medical condition.

III. POLICY

For persons designated as SMI, AHCCCS and the Contractors conduct investigations into allegations of physical Abuse, sexual Abuse, violations of SMI rights, and conditions that are Dangerous, Illegal, or Inhumane. Investigations may also be conducted in the event of a member death that occurs in a Mental Health Agency or as a result of an action of a person employed by a Mental Health Agency.

This Policy does not apply to grievances or requests for investigation asserted by, or on behalf of, persons designated with a SMI to the extent the allegation asserts a violation relating to the right to receive services, supports and/or treatment that are State-funded and are no longer funded by the State due to limitations on legislative appropriation.

A. GENERAL REQUIREMENTS

AHCCCS and the Contractors shall respond to grievances and requests for investigations in accordance with this Policy and the requirements and timelines specified in A.A.C. Title 9, Chapter 21, Article 4.

1. In computing any period of time prescribed or allowed by this Policy, the period begins the day after the act, event or decision occurs and includes all calendar days and the final day of the period. 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. If the period of time is not designated as calendar days and is less than 11 days, then intermediate Saturdays, Sundays and legal holidays shall not be included in the computation.
2. AHCCCS and the Contractors shall use a unique docket number for each Grievance or Request for Investigation filed. The file and all correspondence generated shall reference the docket number.

B. AGENCY RESPONSIBLE FOR RESOLVING GRIEVANCES AND REQUESTS FOR INVESTIGATION

1. Grievances involving an alleged rights violation, or a request for investigation involving an allegation where a Condition Requiring Investigation exists, which occurred in an agency operated by a Contractor or one of its subcontracted providers and which does not involve a member death or an allegation of physical or sexual Abuse, shall be filed with and investigated by the Contractor.
2. Grievances or requests for investigation involving physical or sexual Abuse or death shall be filed with and investigated by AHCCCS.
3. AHCCCS, or the Contractor before whom a Grievance or Request for Investigation is pending, shall immediately take whatever action may be reasonable to protect the health, safety, and security of any member, complainant, or witness.

C. GRIEVANCE/REQUEST FOR INVESTIGATION PROCESS

1. Timeliness and Method for Filing Grievances and Requests for Investigation
 - a. A grievance or a request for investigation shall be submitted to AHCCCS or the Contractor, orally or in writing, no later than 12 months from the date the alleged violation or Condition Requiring Investigation occurred. This timeframe may be extended for good cause as determined by AHCCCS or the Contractor, as applicable,
 - b. Within five days of receipt of a Grievance or Request for Investigation, AHCCCS or the Contractor shall inform the person filing the Grievance or Request for Investigation, in writing, that the grievance or request has been received,
 - c. Any employee or contracted staff of AHCCCS, a Contractor or its subcontracted providers, shall, upon request, assist a person receiving services, or their legal guardian, in making an oral or written Grievance or Request for Investigation or direct the person to an available supervisory or managerial staff who shall assist the person to file a Grievance or Request for Investigation (A.A.C. R9-21-403(F)), and

- d. If AHCCCS, a Contractor, or a Contractor's subcontracted provider receives an oral Grievance or Request for Investigation, it shall accurately reduce it to writing on the AHCCCS Appeal or SMI Grievance Form (Refer to Attachment A).
2. Summary Disposition – AHCCCS or the Contractor may summarily dispose of a Grievance or Request for Investigation, which shall not include any notice or right for further review or hearing, when:
 - a. The alleged violation occurred more than one year prior to the date the grievance or request is received, or
 - b. The grievance or request is primarily directed to the level or type of mental health treatment provided and can be fairly and efficiently addressed through the service planning or Appeal process as specified in A.A.C. Title 9, Chapter 21, Articles 3 and 4.
3. Disposition without investigation - Within seven days of receiving a Grievance or Request for Investigation, it may be resolved without conducting a full investigation if the matter:
 - a. Involves no material dispute as to the facts alleged in the Grievance or Request for Investigation,
 - b. Is frivolous, meaning that it:
 - i. Involves conduct that is not within the scope of A.A.C. Title 9, Chapter 21,
 - ii. Is impossible on its face,
 - iii. Is substantially similar to conduct alleged in two previous grievances or requests for investigation within the past year and which have been determined to be unsubstantiated, or
 - c. Is resolved fairly and efficiently within seven days without a formal investigation.

Within seven days of the receipt of the Grievance or Request for Investigation, a written dated decision shall be issued which explains the essential facts as to why the matter may be appropriately resolved without investigation, and the resolution. The written decision shall contain a notice of Appeal rights, and information to request assistance from the AHCCCS Office of Human Rights (OHR) and the State Protection and Advocacy System. Copies of the decision shall be sent to the person filing the Grievance or Request for Investigation, to the AHCCCS OHR for persons who need Special Assistance, and to other parties as required by A.A.C. Title 9 Chapter 21, Article 4.

4. Conducting Investigations of Grievances
 - a. Investigations shall be conducted pursuant to A.A.C. R9-21-406. The investigator shall:
 - i. Interview the person who filed the grievance and the person receiving services who is identified as the subject of the violation or Abuse (if different) prior to interviewing the person alleged to be the perpetrator of the rights violation, or physical or sexual Abuse,
 - ii. If the person who is the subject of the investigation has been identified as needing Special Assistance, the investigator shall contact the person's

- advocate, or if no advocate is assigned, the investigator shall contact AHCCCS OHR, and request that an advocate be present to assist the person during the interview and any other part of the investigation process,
- iii. Request assistance from the AHCCCS OHR if the person receiving services needs assistance to participate in the interview and any other part of the investigation process, and
 - iv. Prepare a written report that contains at a minimum:
 - 1) A summary for each individual interviewed of information provided by the individual during the interview conducted,
 - 2) A summary of relevant information found in documents reviewed,
 - 3) A summary of any other activities conducted as a part of the investigation,
 - 4) A description of any issues identified during the course of the investigation that, while not related to the allegation or condition under investigation, constitutes a rights violation or Condition Requiring Investigation,
 - 5) A conclusion, describing those findings and/or factors that led to the conclusion, that the alleged violation or Abuse is either substantiated or not substantiated based on a Preponderance of the Evidence, and
 - 6) Recommended actions or a recommendation for required corrective action, if indicated.
 - b. Within five days of receipt of the investigator's report, AHCCCS's Deputy Director, or the Contractor's Director, or their respective designee, shall review the investigation case record and the report, and issue a written, dated decision which shall either:
 - i. Accept the report and state a summary of findings and conclusions, and any recommended actions or corrective action required, and send copies of the decision, subject to confidentiality requirements to the investigator, the Contractor (if appropriate), the person who filed the grievance, the person receiving services identified as the subject of the grievance (if different), the AHCCCS Office of Human Rights for a person in need of Special Assistance, and the applicable human rights committee. The decision shall include a notice of the right to request an Appeal of the decision within 30 days from the date of receipt of the decision. The decision shall be sent to the grievant by certified mail or by hand-delivery, or
 - ii. Reject the report for insufficiency of facts and return the matter for further investigation. The investigator shall complete the further investigation and deliver a revised report within 10 days, absent extension.
 - c. Actions that may be taken or recommended, as indicated above, include:
 - i. Identifying training or supervision for, or disciplinary action against, an individual found to be responsible for a rights violation or Condition Requiring Investigation identified during the course of investigation,
 - ii. Developing or modifying a Mental Health Agency's practices or protocols,
 - iii. Notifying the regulatory entity that licensed or certified an individual as specified in A.R.S. Title 32, Chapter 33 of the findings from the investigation, and/or

- iv. Imposing sanctions, which may include monetary penalties, according to the terms of a contract, if applicable.
- d. A grievant or the client who is the subject of the grievance, who disagrees with the final decision of the Contractor may file a request for an Administrative Appeal with AHCCCS within 30 days from the date of their receipt of the Contractor decision. The request for Administrative Appeal shall specify the basis for the disagreement. Failure to specify the basis for the disagreement may result in a summary determination in favor of the Contractor decision,
- e. In the event an Administrative Appeal is filed, the Contractor shall forward the full investigation case record, which includes all elements as specified in A.A.C. R9-21-409(D)(1), to AHCCCS. The failure of the Contractor to forward a full investigation case record that supports the Contractor's decision may result in a summary determination in favor of the person filing the Administrative Appeal. The Contractor shall prepare and send with the investigation case record, a memo which states:
 - i. Any objections the Contractor has to the timeliness of the Administrative Appeal,
 - ii. The Contractor's response to any information provided in the Administrative Appeal that was not addressed in the investigation report, and
 - iii. The Contractor's understanding of the basis for the Administrative Appeal.
- f. Within 15 days of receipt of a timely filed Administrative Appeal, AHCCCS shall review the Appeal and the investigation case record and may discuss the matter with any of the persons involved or convene an informal conference, and shall prepare a written, dated decision which either:
 - i. Accepts the investigator's report with respect to the facts as found, and affirms, modifies or rejects the decision of the Contractor with a statement of reasons. The decision, along with a notice of the right to request an administrative hearing within 30 days from the date of receipt of the decision, shall be sent to the appealing party, with copies of the decision provided to the Contractor, AHCCCS OHR, and the applicable human rights committee, or
 - ii. Rejects the investigator's report for insufficiency of facts and remands the matter with instructions to the Contractor for further investigation and decision. The Contractor shall conduct further investigation and complete a revised report and decision to AHCCCS within 10 days, after which AHCCCS shall render a final decision. In the alternative, AHCCCS may reject the investigator's report for insufficiency of facts and remand the matter with instructions to the Contractor for further investigation, and the issuance of a revised Contractor's revised decision directly to grievant or member who is the subject of the grievance, along with the right to request a second Administrative Appeal to AHCCCS of the Contractor's revised decision within 30 days from the date of receipt of the revised decision,
- g. Extensions of Time - If an extension of any time frame related to the grievance process is needed, it shall be requested and approved in compliance with A.A.C. R9-21-410(B). Specifically:

- i. The Contractor investigator or any other Contractor official responsible for responding to grievances shall address the extension request to the Contractor Director or designee,
- ii. The AHCCCS investigator or any other AHCCCS official responsible for responding to grievances shall address the extension request to the AHCCCS Deputy Director or designee,
- iii. A Contractor request for an extension to complete an investigation for grievances remanded pursuant to A.A.C. R9-21-407(B)(2) or any other time period established by AHCCCS decisions relating to a grievance shall be addressed to the AHCCCS Deputy Director or designee, and
- iv. Requests for extension shall be in writing, with copies to all parties.

D. REQUEST FOR AN ADMINISTRATIVE HEARING

A grievant or person who is the subject of the grievance who is dissatisfied with a decision of AHCCCS may request an administrative hearing before an administrative law judge within 30 days of the date of receipt of the decision.

1. Upon receipt of a request for a hearing, the hearing shall be scheduled and conducted according to the requirements in A.R.S. §41-1092 et seq.
2. After the expiration of the time frames for Administrative Appeal and administrative hearing as described above, or after the exhaustion of all Appeals, the Contractor, and/or AHCCCS, shall take any corrective action required and add to the record a written, dated report of the action taken. A copy of the report shall be sent to the AHCCCS OHR for persons in need of Special Assistance.

E. MISCELLANEOUS MATTERS RELATING TO THE GRIEVANCE PROCESS

1. In addition to a Grievance or Request for Investigation which may be filed pursuant to this Policy and A.A.C. Title 9, Chapter 21, Article 4, a separate investigation into the death of a person receiving services shall be conducted as specified in AMPM Policy 960.
2. Grievance Investigation Records: AHCCCS and the Contractor will maintain records in the following manner:
 - a. All documentation received related to the grievance and investigation process will be date stamped on the day received,
 - b. A complete grievance investigation case record shall be maintained for each case, and shall include:
 - i. The original grievance/investigation request letter and the AHCCCS Appeal or SMI Grievance Form,
 - ii. Copies of all information generated or obtained during the investigation,
 - iii. The investigator's report which will include:
 - 1) A description of the grievance issue,
 - 2) Documentation of the investigative process,

- 3) Names of all persons interviewed,
 - 4) Written documentation of the interviews,
 - 5) Summary of all documents reviewed,
 - 6) The investigator's findings, and
 - 7) Conclusions and recommendations.
- iv. A copy of:
- 1) The acknowledgment letter,
 - 2) Final decision letter,
 - 3) Corrective action documentation, and
 - 4) Any information/documentation generated by an Appeal of the grievance decision.
3. AHCCCS and the Contractors shall maintain all grievance and investigation files in a secure designated area and retain for at least five years.
 4. AHCCCS and the Contractors shall maintain a public log of all grievances or requests for investigation in accordance with A.A.C. R9-21-409(E).
 5. AHCCCS and the Contractor shall maintain confidentiality and privacy of grievance and investigations records.
 6. Notice shall be given to a public official, law enforcement officer, or other person, as required by law, that an incident involving death, Abuse, neglect, or threat to a person receiving services has occurred, or that a Dangerous condition or event exists. Refer to AMPM Policy 960.
 7. The Contractor shall notify the Deputy Director of AHCCCS, or designee, when:
(Refer to AMPM Policy 960)
 - a. A person receiving services files a complaint with law enforcement alleging criminal conduct against an employee,
 - b. An employee or contracted staff files a complaint with law enforcement alleging criminal conduct against a person receiving services, and
 - c. An employee, contracted staff, or person receiving services is charged or convicted of a crime related to a rights violation, physical or sexual Abuse, or death of a person receiving services.