

Chapter 182-538C WAC

CRISIS AND NONCRISIS BEHAVIORAL HEALTH SERVICES

WAC

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WAC 182-538C-040 Behavioral health services. (1)

This chapter governs crisis-related and other behavioral health services provided under the medicaid agency's behavioral health administrative services organization (BH-ASO) contract.

(2) The BH-ASO contracts with the agency to provide behavioral health services within a fully integrated managed care (FIMC) regional service area.

(a) The BH-ASO provides the following services to all people, regardless of insurance status, income level, ability to pay, and county of residence:

- (i) Mental health crisis services; and
- (ii) Operation of a behavioral health ombuds (ombudsman).

(b) The BH-ASO may provide substance use disorder crisis services within available resources to all people, regardless of the person's insurance status, income level, ability to pay, and county of residence.

(c) The BH-ASO provides the following services to people who are not eligible for medicaid coverage and are involuntarily or voluntarily detained under chapter 71.05 or 71.34 RCW, RCW 70.96A.140, or a less restrictive alternative (LRA) court order:

- (i) Evaluation and treatment services;
- (ii) Substance use disorder residential treatment services; and
- (iii) Outpatient behavioral services, under an LRA court order.

(d) To be eligible to contract with the agency, the BH-ASO must:

- (i) Accept the terms and conditions of the agency's contracts; and
- (ii) Be able to meet the network and quality standards established by the agency.

(e) Services related to the administration of chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(3) The BH-ASO may provide contracted noncrisis behavioral health services to people in an FIMC regional service area:

- (a) Within available resources;
- (b) Based on medical necessity; and
- (c) In order of priority to populations as identified by state and federal authorities.

(4) Within an FIMC regional service area, the BH-ASO is a subcontractor with all FIMC managed care organizations

(MCOs) to provide crisis services for medicaid enrollees and the administration of involuntary treatment acts under RCW 70.96A.140 or chapter 71.05 or 71.34 RCW.

(5) For medicaid-funded services subcontracted for by FIMC managed care organizations (MCOs) to the BH-ASO:

(a) Grievances and appeals must be filed with the FIMC MCO; and

(b) The grievance and appeal system and the agency's administrative hearing rules in chapter 182-538 WAC apply instead of the grievance and appeal system and hearing rules in this chapter.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 17-23-200, § 182-538C-040, filed 11/22/17, effective 12/23/17; WSR 16-05-051, § 182-538C-040, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-050 Definitions. The definitions and abbreviations in this section and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Action" means the denial or limited authorization of a service covered under the behavioral health administrative services organization (BH-ASO) contract based on medical necessity.

"Available resources" means funds appropriated for the purpose of providing community behavioral health programs.

(a) This includes:

- (i) Federal funds, except those provided according to Title XIX of the Social Security Act; and
- (ii) State funds appropriated by the legislature for the purpose of providing services under the BH-ASO contract.

(b) This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

"Behavioral health" means mental health and substance use disorder conditions and related benefits.

"Behavioral health administrative services organization (BH-ASO)" means an entity selected by the medicaid agency to administer behavioral health programs, including crisis services for individuals in a fully integrated managed care regional service area. The BH-ASO administers crisis services for all individuals in its defined regional service area, regardless of an individual's ability to pay.

"Complaint" - See "grievance."

"Crisis" means an actual or perceived urgent or emergent situation that occurs when:

- (a) An individual's stability or functioning is disrupted; and
- (b) There is an immediate need to resolve the situation to prevent:

(i) A serious deterioration in the individual's mental or physical health; or

(ii) The need for referral to a significantly higher level of care.

"Fully integrated managed care (FIMC)" means the program under which a managed care organization provides:

- (a) Physical health services funded by medicaid; and
- (b) Behavioral health services funded by other available resources as defined in this chapter.

"Grievance" means an expression of dissatisfaction made by or on behalf of an individual and referred to a behavioral health administrative services organization (BH-ASO) about any matter other than an action.

"Less restrictive alternative (LRA)" means court-ordered outpatient treatment in a setting less restrictive than total confinement.

"Noncrisis services" means services funded by non-medicaid funding sources that are provided to individuals who are not enrolled in Washington apple health or otherwise eligible for medicaid. These services may be provided at the discretion of the behavioral health administrative services organization (BH-ASO) within available resources, such as:

- (a) Crisis stabilization;
- (b) Outpatient mental health or substance use disorder services; and
- (c) Withdrawal management.

"Patient days of care" means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ninety days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

"Regional service area" means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-05-051, § 182-538C-050, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-070 Payment. (1) For crisis services, the behavioral health administrative services organization (BH-ASO) must determine whether the individual receiving the services is eligible for Washington apple health or if the individual has any other form of insurance coverage.

(2) For individuals receiving crisis services who do not have other insurance coverage, the BH-ASO is responsible for the cost of those services.

(3) The BH-ASO administers and pays for the evaluation of involuntary detention or involuntary treatment under chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(4) The BH-ASO pays a reimbursement for each state hospital patient day of care that exceeds the BH-ASO daily allocation of state hospital beds based on a quarterly calculation of the bed usage by the BH-ASO.

(a) The medicaid agency bills the BH-ASO quarterly for state hospital patient days of care exceeding the BH-ASO daily allocation of state hospital beds and the established rate of reimbursement.

(b) The BH-ASO using fewer patient days of care than its quarterly allocation of state hospital beds will receive a portion of the reimbursement collected proportional to its share of the total number of patient days of care that were not used at the appropriate state hospital.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-05-051, § 182-538C-070, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-110 Grievance and appeal system and agency administrative hearing for behavioral health administrative services organizations (BH-ASOs). (1)

General. This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for people within fully integrated managed care (FIMC) regional service areas.

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

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by 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 agency administrative hearing.

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

(a) A process for addressing complaints about any matter that is not an action;

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

(3) **The BH-ASO grievance process.**

(a) A person or a person's authorized representative may file a grievance with a BH-ASO. A provider may not file a grievance on behalf of 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 regarding the BH-ASO's decision on a grievance, since a grievance is not an action.

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

(4) **The BH-ASO appeal process.**

(a) 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 person's written consent may appeal a BH-ASO action.

(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.

(d) The BH-ASO must confirm any oral appeal in writing 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 sixty 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 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 a person.

(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 appeal process:

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

(ii) Provides the person and the person's authorized representative opportunity before and during the appeals process to examine the person's case file, including medical records and any other documents and records considered during the appeal process free of charge.

(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 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 person's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) An appeal that involves any clinical issues.

(j) Time frames for standard resolution of appeals.

(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.

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

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

(5) Agency administrative hearings.

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

(b) If a person does not agree with the BH-ASO's resolution of an appeal, the 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.

(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 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 person's health condition requires.

(7) Available resources exhausted. 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.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 17-23-200, § 182-538C-110, filed 11/22/17, effective 12/23/17; WSR 16-15-030, § 182-538C-110, filed 7/13/16, effective 8/13/16; WSR 16-05-051, § 182-538C-110, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-220 Covered crisis mental health services. (1) Crisis mental health services are intended to stabilize an individual in crisis to:

(a) Prevent further deterioration;

(b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and

(c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

(a) Crisis telephone support under WAC 388-877A-0230;

(b) Crisis outreach services under WAC 388-877A-0240;

(c) Crisis stabilization services under WAC 388-877A-0260;

(d) Crisis peer support services under WAC 388-877A-0270; and

(e) Emergency involuntary detention services under WAC 388-877A-0280.

(3) A facility providing any crisis mental health service to an individual must:

(a) Be licensed by the department of social and health services as a behavioral health agency;

(b) Be certified by the department of social and health services to provide crisis mental health services;

(c) Have policies and procedures to support and implement the:

(i) Program-specific requirements in WAC 388-877A-0230 through 388-877A-0280 for each crisis mental health service provided; and

(ii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(4) A BH-ASO or its subcontractor providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) A BH-ASO or its subcontractor must ensure crisis mental health services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis; and

(c) Are provided in a setting that is safe for the individual and staff members of the BH-ASO and its subcontractor.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-05-051, § 182-538C-220, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-230 Covered substance use disorder detoxification services. (1) Chemical dependency detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner.

(2) A facility providing detoxification services to an individual must:

(a) Be a facility licensed by the department of health under one of the following:

(i) Chapter 246-320 WAC;

(ii) Chapter 246-322 WAC;

(iii) Chapter 246-324 WAC; or

(iv) Chapter 246-337 WAC.

(b) Be licensed by the department of social and health services as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, clinical requirements, and behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the applicable requirements in WAC 388-877B-0110 through 388-877B-0130.

(3) A BH-ASO or its subcontractor agency must:

(a) Provide counseling to each individual that addresses the individual's:

(i) Chemical dependency and motivation; and

(ii) Continuing care needs and need for referral to other services.

(b) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.

(c) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(e) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-05-051, § 182-538C-230, filed 2/11/16, effective 4/1/16.]