

Chapter 182-538C WAC
CRISIS AND NONCRISIS BEHAVIORAL HEALTH SERVICES

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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. See also chapter 182-538D WAC for rules applicable to nonmedicaid behavioral health services.

(2) The BH-ASO contracts with the agency to provide behavioral health services within an integrated managed care (IMC) 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;
- (ii) Operation of a behavioral health ombuds (ombudsman); and
- (iii) Implementation of the Involuntary Treatment Act for both mental health and substance use disorders.

(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, 71.24, or 71.34 RCW, 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, 71.24, and 71.34 RCW.

(3) The BH-ASO may provide contracted noncrisis behavioral health services to people in an IMC 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 IMC regional service area, the BH-ASO is a subcontractor with all IMC managed care organizations (MCOs) to provide crisis services for medicaid enrollees and the administration of involuntary treatment acts under chapter 71.05, 71.24, or 71.34 RCW.

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

- (a) Grievances and appeals must be filed with the IMC 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 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-040, filed 11/27/19, effective 1/1/20. 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 in this section and those found in chapters 182-500 and 182-538 WAC apply to this chapter.

"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" - See WAC 182-538-050.

"Behavioral health administrative services organization (BH-ASO)" - See WAC 182-538-050.

"Complaint" - See "grievance."

"Crisis" - See WAC 182-538D-0200.

"Grievance" - See WAC 182-538-050.

"Integrated managed care (IMC)" - See WAC 182-538-050.

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

"Noncrisis services" means services funded by nonmedicaid funding sources that are provided to people 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" - See WAC 182-538-050.

"Regional service area" - See WAC 182-538-050.

[Statutory Authority: RCW 41.05.021 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-050, filed 11/27/19, effective 1/1/20. 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 person receiving the services is eligible for Wash-

ington apple health or if the person has any other form of insurance coverage.

(2) For people 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, 71.24, and 71.34 RCW.

(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 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-070, filed 11/27/19, effective 1/1/20. 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 integrated managed care (IMC) 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.

(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.

(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 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-110, filed 11/27/19, effective 1/1/20. 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 a person in crisis to:

- (a) Prevent further deterioration;
- (b) Provide immediate treatment and intervention in a location best suited to meet the needs of the person; and
- (c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

- (a) Crisis telephone support;
- (b) Crisis outreach services;
- (c) Crisis stabilization services;
- (d) Crisis peer support services; and
- (e) Emergency involuntary detention services.

(3) A facility providing any crisis mental health service to a person must:

- (a) Be licensed by the department of health as a behavioral health agency;
- (b) Be certified by the department of health to provide crisis mental health services;
- (c) Have policies and procedures to support and implement the:
 - (i) Program-specific requirements for each crisis mental health service provided; and
 - (ii) Department of corrections access to confidential mental health information requirements in WAC 182-538D-0600 through 182-538D-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 246-341-0610, 246-341-0620, and 246-341-0640.

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

[Statutory Authority: RCW 41.05.021 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-220, filed 11/27/19, effective 1/1/20. 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 provi-

ded to a person to assist in the process of withdrawal from psychoactive substances in a safe and effective manner.

(2) A facility providing detoxification services to a person 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 health 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 246-341-1100 and 246-341-1102.

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

(a) Provide counseling to each person that addresses the person'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 a person to appropriate services.

(c) Post any rules and responsibilities for people 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 people 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 and 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-230, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-05-051, § 182-538C-230, filed 2/11/16, effective 4/1/16.]

WAC 182-538C-252 Behavioral health administrative services organizations—Advisory board membership. (1) A behavioral health administrative services organization (BH-ASO) must appoint advisory board members and maintain an advisory board in order to:

(a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and

(b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BH-ASO must appoint advisory board members and maintain an advisory board that:

(a) Broadly represents the demographic character of the service area;

(b) Is composed of at least fifty-one percent representation of one or more of the following:

- (i) People with lived experience;
- (ii) Parents or legal guardians of people with lived experience;

or

(iii) Self-identified as people in recovery from a behavioral health disorder.

(c) Includes law enforcement representation; and

(d) Includes tribal representation, upon request of a tribe.

(3) When the BH-ASO is not a function of county government, the advisory board must include no more than four county elected officials.

(4) The advisory board:

(a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.

(b) Has the discretion to set rules in order to meet the requirements of this section.

(c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to the BH-ASO, on plans, budgets, and policies developed by the BH-ASO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538C-252, filed 11/27/19, effective 1/1/20.]