United Behavioral Health

Grievance and Appeal System: Medicaid Enrollee's Right to Appeal Notices of Adverse Benefit Determination			**Policy Identifier/Number:** CR-02B
Annual Review Completed Date: March 2018			
Policy Category: Government – Pierce Regional Support Network	**Applicable Lines of Business:** Medicaid	**Entity/Plan:** Optum Pierce Behavioral Health Organization	**State:** Pierce County, Washington
Approved by: Bea Dixon, Executive Director			**Signature:**

Policy Statement and Purpose

- Medicaid enrollees, behavioral health care providers or representatives on behalf of the enrollee with the individual's written permission may request an appeal or expedited appeal of actions to the Optum Pierce Behavioral Health Organization (BHO). Medicaid enrollees are sent a written *Notice of Adverse Benefit Determination* that explains the adverse benefit determination that the Optum Pierce BHO intends to take, or has taken, the reasons for the adverse benefit determination and the right to request an appeal or expedited appeal of the adverse benefit determination..
- The *Notice of Adverse Benefit Determination* also outlines the process to appeal an adverse benefit determination. Behavioral Health Agencies (BHAs) providing services to an enrollee also receive oral notice and written copies of the *Notice of Adverse Benefit Determination* and its resolution.
- For denials of inpatient authorization or extensions, the inpatient provider receives a written copy of the *Notice of Adverse Benefit Determination.*

Optum Pierce BHO recognizes the rights of Medicaid enrollees to appeal "adverse benefit determinations" taken by the Optum Pierce BHO; the purpose of this policy is to outline the appeal for Medicaid enrollees.

Policy Audience and Applicability

This policy is applicable to the Optum Pierce BHO and benefits administered through the Washington State Department of Social and Health Services (DSHS) current Prepaid Inpatient Health Plan (PIHP).

Policy Definitions

- **Administrative Hearing**: a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested non-Medicaid service communicated on a notice of determination.
- **Adverse Benefit Determination**: in the case of Medicaid services administered by the BHO, any one or more of the following:
    - The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

- The reduction, suspension, or termination of a previously authorized service;
- The denial, in whole or in part, of payment for a service;
- The failure to provide services in a timely manner, as defined by the state;
- The failure of a BHO to act within the grievance and appeal system time frames as provided in *WAC 388-877-0660 through 388-877-0670* regarding the standard resolution of grievances and appeals;
- For a resident of a rural area with only one BHO, the denial of and individual's request to exercise their right to obtain services outside the network;
- The denial of an individual's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

- **Appeal**: a review by the behavioral health organization (BHO) of an adverse benefit determination.
- **Grievance**: an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, an individual's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavior health provider or employee, and failure to respect the individual's rights regardless of whether a specific action is requested by the individual.
- **Grievance and Appeal System**: the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of *42 C.F.R. Sec. 438, Subpart F (2017)*.
- **Individual**: a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing process, when another person is acting on an individual's behalf, the definition of individual also includes any of the following:
  - In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;
  - The individual's legal guardian;
  - The individual's representative if the individual gives written consent;
  - The individual's behavioral health provider if the individual gives written consent, except that the behavioral health provider cannot request continuation of benefits on the individual's behalf.
- **Notice of Adverse Benefit Determination**: a written notice a BHO provides to an individual to communicate an adverse benefit determination.
- **Notice of Determination**: a written notice that must be provided to an individual to communicate denial or limited authorization of a non-Medicaid service offered by the BHO. A notice of determination must contain the following:
  - The reason for denial or offering of alternative services;
  - A description of alternative services, if available; and
  - The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in *WAC 388-877-0675.*

Policy Provisions

1. Filing an Appeal

1.1. An individual may file an appeal to ask the Optum Pierce BHO to review an adverse benefit determination that the Optum Pierce BHO has communicated on a written notice of adverse benefit determination as defined in *WAC 388-877-0655*. An individual's representative may appeal an adverse benefit determination with the individual's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

1.2. The individual requesting review of an adverse benefit determination must exhaust the appeals process before requesting an administrative hearing.

1.3. Appeals may be:

1.3.1. Standard; or

1.3.2. Expedited if the criteria are met

1.4. The appeal process must:

1.4.1. Provide an individual a reasonable opportunity to present evidence and testimony and make legal and factual arguments in person as well as in writing. Optum Pierce BHO must inform the individual of the limited time available.

1.4.2. Provide the individual, free of charge and sufficiently in advance, the individual's clinical record, including new or additional evidence, medical records, and any other documents and records considered during the appeal process.

1.4.3. Include the following, as applicable, as parties to the appeal:

1.4.3.1. The individual, the individual's representative, or both; or

1.4.3.2. The legal representative of a deceased individual's estate.

1.5. Optum Pierce BHO must ensure that the persons who make decisions on an appeal:

1.5.1. Neither were involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

1.5.2. Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

1.5.3. Consider all comments, documents, records, and other information submitted by the individual regardless of whether the information was considered in the initial review.

1.6. **Standard appeals for adverse benefit determination, continued services not requested**: an individual who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of a standard appeal must be followed with a written and signed appeal. Optum Pierce BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of following apply:

1.6.1. The individual must file the appeal within 60 calendar days from the date on the notice of adverse benefit determination.

1.6.2. Optum Pierce BHO must confirm receipt of the appeal in writing within 5 business days.

1.6.3. Optum Pierce BHO must send the individual a written notice of the resolution as expeditiously as the individual's health condition requires, and no longer than 30 calendar days from the day the Optum Pierce BHO received the appeal. This time frame may be extended up to 14 additional calendar days if the individual requests

an extension or the Optum Pierce BHO is able to demonstrate to the Division of Behavioral Health and Recovery (DBHR) upon DBHR's request that it needs additional information and that the added time is in the individual's best interest. Optum Pierce BHO must:

1.6.3.1. Make reasonable efforts to give the individual prompt oral notice of the delay; and

1.6.3.2. Within 2 calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision.

1.7. **Expedited appeal process**: if an individual or the individual's behavioral health provider believes that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal may be requested. If Optum Pierce BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the time frame for standard resolutions and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within 2 calendar days with a written notice.

1.7.1. Both of the following apply to expedited appeal requests:

1.7.1.1. The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services

1.7.1.2. The expedited appeal must be filed with the Optum Pierce BHO orally or in writing and within:

1.7.1.2.1. Ten calendar days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the individual is requesting continued benefits; or

1.7.1.2.2. Sixty calendar days from the date on the BHO's written notice of adverse benefit determination if the individual is not requesting continued services.

1.7.1.3. The Optum Pierce BHO must:

1.7.1.3.1. Confirm receipt of the request for an expedited appeal in person or by telephone.

1.7.1.3.2. Send the individual a written notice of the resolution as expeditiously as the individual's health condition requires, and no longer than 72 hours after receiving the request for an expedited appeal.

1.7.1.4. The Optum Pierce BHO may extend the time frames up to 14 calendar days if the individual requests an extension or the Optum Pierce BHO is able to demonstrate to DBHR upon DBHR's request that it needs additional information and that the added time is in the individual's interest. In this case Optum Pierce BHO must:

1.7.1.4.1. Make reasonable efforts to give the individual prompt oral notice of the delay;

1.7.1.4.2. Within 2 calendar days give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision; and

1.7.1.4.2.1. Resolve the appeal as expeditiously as the individual's health

condition requires and no later than the date the extension expires.

1.7.2. The Optum Pierce BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports an individual's appeal.

1.8. The Optum Pierce BHO's written notice of the resolution containing the decision on a standard or expedited appeal must:

1.8.1. Clearly state Optum Pierce BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

1.8.2. Inform the individual of the right to an administrative hearing if the individual disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

1.8.2.1. Within 10 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.

1.8.2.2. Within 120 calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

1.8.3. Be in an easily understood format following *42 C.F.R. Sec. 438-10 (2017)*, which includes requirements that each notice:

1.8.3.1. Be written in the individual's non-English language, if applicable;

1.8.3.2. Contains the Optum Pierce BHO's toll-free and TTY/TDY telephone number; and

1.8.3.3. Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American Sign Language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

1.9. When the Optum Pierce BHO does not act within the appeal process time frames, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

1.10. Duration of continued services during the appeal process. When an individual has requested continued behavioral health services pending the outcome of the appeal process and the criteria have been met, the Optum Pierce BHO must ensure the services are continued until one of the following occurs:

1.10.1. The individual withdraws the appeal; or

1.10.2. The Optum Pierce BHO provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request an administrative hearing within 10 calendar days from the date the Optum Pierce BHO mails the notice.

1.11. Reversal of an adverse benefit determination: If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the Optum Pierce BHO must authorize or provide the behavioral health service(s) no later than 72 hours from the date it receives notice of the adverse benefit determination is being overturned.

1.12. Recovery of the cost of behavioral health services in the adverse decision of appeals. If the final written notice of the resolution of the appeal is not in favor of the individual, the Optum Pierce BHO may recover the cost of the behavioral health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the *WAC 388-877-0670* requirements. Recovery of the cost

of Medicaid services is limited to the first 60 days of services after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See *RCW 74.09.741*.

1.13. Recordkeeping and maintenance of appeals. The Optum Pierce BHO must ensure that full records of all appeals and materials received compiled in the course of processing and attempting to resolve appeals are:

1.13.1. Kept for a period of no less than 10 years after the completion of the appeal process.

1.13.2. Made available to DBHR upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

1.13.3. Kept in confidential files separate from the individual's clinical record;

1.13.4. Not disclosed without the individual's written permission, except to DBHR or as necessary to resolved the appeal; and

1.13.5. Accurately maintained and contain, at a minimum, all of the following information:

1.13.5.1. A general description of the reason for the appeal;

1.13.5.2. The date received;

1.13.5.3. The date of each review or, if applicable, review meeting;

1.13.5.4. Resolution at each level of the appeal, if applicable;

1.13.5.5. Date of resolution at each level, if applicable; and

1.13.5.6. Name of the covered person for whom the appeal was file.

2. The Optum Pierce BHO monitors quality through:

2.1.1. Oversight during the grievance and appeal process to ensure that services are provided as required, timelines for decisions are met as required, and retaliation does not occur;

2.1.2. Quarterly coordination of data collection of appeals; and

2.1.3. Aggregation of data and trends reported to the Optum Pierce BHO QA/PI Committee for the purposes of quality monitoring and service improvement.

Related Policies, Procedures & Materials

- Pierce Behavioral Health Organization Policy: CR-01 - *Consumer Rights and Responsibilities*
- Pierce Behavioral Health Organization Policy: *CR-02A-Grievance and Appeal System: Grievance Process*
- Pierce Behavioral Health Organization Policy: *CR-02C- Grievance and Appeal System: Medicaid Enrollee's Adverse Benefit Determination Notice*
- Pierce Behavioral Health Organization Policy: *CR-02D-Grievance and Appeal System: Administrative Hearings*
- Pierce Behavioral Health Organization Policy: CR-06 - *Ombuds Services*

Attachments

N/A

Approval History

- Policy created and effective: 07/2009

- Policy and Procedure Committee review and approval: 10/26/2009
- Policy and Procedure Committee review and approval: 08/23/2010
- Policy and Procedure Committee review and approval: 09/26/2011
- Policy and Procedure Committee review and approval: 08/27/2012
- Policy and Procedure Committee review and approval: 12/02/2013
- Policy and Procedure Committee review and approval: 12/15/2014
- Policy and Procedure Committee review and approval: 02/24/2016
- Operation Procedures and Standards Committee reviewed and accepted: 01/25/2017