

Behavioral Healthcare, Inc.

155 Inverness Drive West • Suite 201 • Englewood, CO 80112

Utilization Management

Subject: UM-804 Appeal Process		Effective Date: 9/1/2003
Authorized by: Jennifer Conrad, MSW, LCSW Director of Utilization Management	Page: 1 of 9	Review Date: 10/1/03, 6/7/04, 6/1/05, 9/20/05, 2/2/06, 12/31/08, 10/7/09, 1/14/10, 9/14/11

I. Policy:

Behavioral Healthcare, Inc. (BHI) supports the right of BHI Medicaid Members, their legal guardians, and designated client representatives (DCR) to access and utilize the Medicaid Managed Care Appeal System at the BHI level and the State Fair Hearing process for Appeals.

II. Purpose:

To provide a process by which a BHI Medicaid Member, guardian(s), and/or the DCR may Appeal an Action taken by BHI.

III. Definitions:

A. An **Action** means:

1. The denial or limited authorization of a requested service, including the type or level of service;
2. The reduction, suspension or termination of a previously authorized service;
3. The denial, in whole, or in part, of payment for a service.
4. The failure to provide services in a timely manner;
5. The failure to act within the required timeframes for the grievance and appeal processes; or
6. For Members in rural areas, the denial of a Member's request to exercise his or her right to obtain services outside the BHI network.

B. An **Appeal** means a request for review of an Action.

C. A **Designated Client Representative (DCR)** means any person, including a treating health care professional, authorized in writing by the Member or the Member's legal guardian to represent his or her interests related to grievances or Appeals about health care benefits and services.

D. A **Notice of Action (NOA)** means the written notice sent to the Member or the

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Member's legal guardian for each Action taken by BHI.

- E. A **State Fair Hearing** means the formal adjudication process for Appeals described in 10 CCR 2505-10 § 8.057.
- F. **Timely Filing** means filing on or before the later of the following:
1. Within ten (10) calendar days of BHI postmarking a Notice of Action (NOA) to reduce, suspend or terminate a previously authorized service;
 2. Within thirty (30) calendar days of BHI postmarking an NOA to deny or limit authorization of a requested service, including the type or level of service; or
 3. The intended effective date of BHI's proposed Action.

IV. Procedure:

- A. The BHI Member, legal guardian or DCR must file an Appeal with BHI, orally or in writing (10 CCR 2505-10 § 8.209.4.F; 42 CFR 438.402 (b) (2) (i)).
1. BHI will treat oral inquiries seeking to Appeal an Action as Appeals, to establish the earliest possible filing date for the Appeal (42 CFR § 438.406 (b) (1)).

Unless the BHI Member requests expedited resolution, he/she must follow the oral filing of an Appeal with a written, signed Appeal (42 CFR 438.402 (b) (3) (ii)).

2. The BHI Member, legal guardian or DCR must file an Appeal with BHI within the following timeframes:

Within thirty (30) calendar days of the date of the NOA if BHI has decided to deny or limit authorization of a requested service, including the type or level of service (10 CCR 2505-10 § 8.209.4.B).

3. A provider, acting on behalf of the BHI Member and with the Member's written consent, may file an Appeal (42 CFR § 438.402 (b) (1) (ii)).

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If the Appeal is filed by a DCR, a DCR form must be completed by the BHI Member, designating the individual as the DCR (see UM-804 Attachment – Designated Client Representative (DCR) Form).

4. BHI will give the Member reasonable assistance in completing any forms required, putting oral requests for an Appeal or State Fair Hearing into writing, and taking other procedural steps to assist the Member in filing, preparing and writing an Appeal request (10 CCR 2505-10 § 8.209.4; 42 CFR § 438.406 (a) (1)), including but not limited to:
 - a) Providing interpretive services (10 CCR 2505-10 § 8.209.4; 42 CFR § 438.406 (a) (1)) and
 - b) Toll-free telephone numbers that have adequate Teletypewriting Device for the Deaf/Teletypewriter (TTY/TTD) and interpreter capability. (10 CCR 2505-10 § 8.209.4.C; 42 CFR § 438.406 (a) (1)).
- B. BHI will send the Member and DCR written acknowledgement of the Appeal request within two (2) working days of receipt, unless the Member or DCR requests an expedited resolution (10 CCR 2505-10 § 8.209.4.D; 42 CFR § 438.406 (a) (2)) (see UM-804 Attachment – Standard Appeal Request Acknowledgement).
- C. BHI Appeal Review Panels are comprised of a Board-certified licensed psychiatrist and licensed clinicians.
 1. The individuals who make decisions on Appeals will be individuals who:
 - a) Were not involved in any previous level of review or decision-making and;
 - b) Have the appropriate clinical expertise in treating the Member's condition or disorder if deciding any of the following:
 - i. An appeal of a denial that is based on lack of medical necessity or
 - ii. A grievance regarding the denial of expedited resolution of an

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appeal; or

- iii. A grievance that involves clinical issues (10 CCR 2505-10 § 8.209.4.E; 42 CFR § 438.406 (a) (3) (i) – (ii)).

2. The Board-certified licensed psychiatrist will review and sign the Appeal review decision.

- D. BHI will provide the Member and DCR a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing, to the Appeal reviewer(s) (10 CCR 2505-10 § 8.209.4.G; 42 CFR § 438.406 (b) (2)).

In the case of expedited resolution, BHI will make reasonable effort to verbally inform the Member and DCR of the limited time available at the time the Appeal is requested (10 CCR 2505-10 § 8.209.4.G; 42 CFR § 438.406 (b) (2)).

- E. BHI will provide the Member and the DCR opportunity, before and during the appeal process, to examine the Member's case file, including medical records and any other documents and records considered during the appeal process (10 CCR 2505-10 § 8.209.4.H; 42 CFR § 438.406 (b) (3)).
- F. BHI will include as parties to the Appeal, the Member and the DCR, or the legal representative of a deceased Member's estate (10 CCR 2505-10 § 8.209.4.I; 42 CFR § 438.406 (b) (4) (i) – (ii)).
- G. BHI will resolve each Appeal, and provide notice as expeditiously as the Member's health condition requires (42 CFR § 438.408 (a)), not to exceed the following:
 1. For standard resolution of an Appeal and Notice to the affected parties, ten (10) working days from the day BHI receives the initial Appeal request, either verbally or in writing (42 CFR § 438.408 (b) (2)).
 2. For expedited resolution of an Appeal and notice to affected parties, three (3) working days after BHI receives the initial Appeal request, either verbally or in writing (10 CCR 2505-10 § 8.209.4.J.1 – 2; 42 CFR § 438.408 (b) (3)).

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3. For Appeal of an out-of-home placement denial under The Child Mental Health Treatment Act (also known as HB 99-1116) (Section 27-10.3-101, *et seq.*, CRS; 2 CCR 502-3), the following timeframes apply:

a) If the parent/guardian requests a grievance (i.e., Appeal) of a denial of treatment or a recommendation that a child be discharged from services, either in writing or orally, BHI will have two (2) working days within which to complete the internal grievance (i.e., Appeal) review process and communicate a decision to the parent/guardian in writing and orally, in person when possible (2 CCR 502-3 § 20.600, B).

i. The written decision notice will contain the following information:

(a) The applicable criteria for mental health treatment;

(b) The factual basis for the decision;

(c) The grievance procedures;

(d) A statement for the parent/guardian to sign, indicating that:

(i) They agree with the decisions, or

(ii) They disagree and wish to file a request for clinical review at the State level; (2 CCR 502-3 §§ 20.400, E, and 20.600, B) and

(e) The process for clinical review (2 CCR 502-3 § 20.600, C – E).

ii. If BHI requires more than two (2) working days to complete its internal review and the parent/guardian is in agreement, then BHI may take up to but no more than five (5) working days to complete the review.

If the parent/guardian is not agreeable, the two (2) working day timeline discussed above remains in effect (2 CCR 502-3 § 20.600, B).

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H. BHI may extend the timeframes for the resolution of Appeals for both standard and expedited appeals – with the exception of HB 99-1116 reviews (see above) – by up to fourteen (14) calendar days:

1. If the Member or DCR requests the extension; or
2. BHI shows that there is a need for additional information and that the delay is in the Member's best interest (10 CCR 2505-10 § 8.209.4.K; 42 CFR § 438.408 (c) (1) (i) – (ii)).

BHI will give the Member and DCR prior written notice of the reason for any extension not requested by the member or DCR (10 CCR 2505-10 § 8.209.4.K; 42 CFR § 438.408 (c) (2)) (see UM-804 Attachment – Appeal Extension Request).

I. BHI will notify the Member and DCR in writing of the disposition of an Appeal (10 CCR 2505-10 § 8.209.4.L; 42 CFR § 438.408 (d) (2) (i)) (see UM-804 Attachment – Appeal Panel Resolution Template).

1. The written notice of resolution will include:
 - a) The results of the resolution process and the date it was completed (10 CCR 2505-10 § 8.209.4.M; 42 CFR § 438.408 (e) (1)).
 - b) For Appeals not resolved wholly in favor of the Member:
 - i. The right to request a State Fair Hearing and how to do so;
 - ii. Assistance requesting a State Fair Hearing available to the Member and/or DCR through BHI;
 - iii. The right to request and to receive benefits while the hearing is pending, and how to make the request; and
 - iv. That the Member may be held liable for the cost of those benefits if the hearing decision upholds BHI's Action (10 CCR 2505-10 § 8.209.4.M.1.a – c; 42 CFR § 438.408 (e) (2) (i) – (iii)).

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- c) For notice of an expedited resolution, BHI will also make reasonable efforts to provide oral notice to the Member and DCR (10 CCR 2505-10 § 8.209.4.L; 42 CFR § 438.408 (d) (2) (ii)).
- J. The Member need not exhaust the BHI level appeal process before requesting a State Fair Hearing (10 CCR 2505-10 § 8.209.4.N; 42 CFR § 438.402 (b) (2) (ii)).
1. The Member must request a State Fair Hearing within thirty (30) calendar days of the date of the NOA (10 CCR 2505-10 § 8.209.4.N).
 2. In cases where a parent or guardian submits a request for a third party clinical review to the Colorado Department of Human Services (DHS) under the Child Mental Health Treatment Act (27-10.3-104 (1)(b) CRS), the Member, parent or guardian, and BHI have the right to request a State Fair Hearing.
 - a) The request for the State Fair Hearing will be submitted to the Division of Administrative Hearings within thirty (30) calendar days from the date of the determination.
 - b) The State Fair Hearing will be considered a Member Appeal. (10 CCR 2505-10 § 8.209.4.O)
 3. If the State Fair Hearing request is filed by a DCR, a DCR form must be completed by the BHI Member, designating the individual as the DCR (see UM-804 Attachment – Designated Client Representative (DCR) Form).
- K. BHI will utilize an expedited review process for Appeals when BHI determines, or the provider indicates, that taking the time for a standard resolution could seriously jeopardize the Member's life or health or ability to attain, maintain or regain maximum function (10 CCR 2505-10 § 8.209.4.P).
- L. BHI will ensure that punitive action is not taken against a provider who requests an expedited resolution or supports a Member's Appeal (10 CCR 2505-10 § 8.209.4.Q).

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M. If BHI denies a request for expedited resolution, BHI will:

1. Transfer the appeal to the timeframe for standard resolution;
2. Make reasonable effort to give the Member and DCR prompt oral notice of the denial to expedite the resolution and follow-up within two (2) calendar days with a written notice (10 CCR 2505-10 § 8.209.4.R).

The written notice of the denial for an expedited resolution will include information on how the Member or DCR can file a grievance regarding this decision (see UM-804 Attachment – Expedited Appeal Request Denied).

N. BHI will provide for the continuation of benefits while the BHI level Appeal and the State Fair Hearing are pending if:

1. The Member or DCR files the Appeal timely (i.e., within thirty (30) calendar days from the date on the letter if BHI denies or limits a type or level of service; within ten (10) calendar days from the date on the letter if BHI reduces, suspends or stops a service the Member was already receiving; or before the date of the intended Action, whichever is later).
2. The Appeal involves the termination, suspension or reduction of a previously authorized course of treatment;
3. The services were ordered by an authorized provider;
4. The original period covered by the original authorization has not expired; and
5. The Member or DCR requests extension of benefits (10 CCR 2505-10 § 8.209.4.S).

O. If at the Member's request, BHI continues or reinstates the Member's benefits while the Appeal is pending, the benefits will be continued until one of the following occurs:

1. The Member withdraws the appeal;

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2. Ten (10) days pass after BHI mails the notice providing the resolution (that is against the Member) of the appeal, unless the member (within the 10-day time frame) has requested a State Fair Hearing with continuation of benefits until a State Fair Hearing decision is reached; or
3. The State Fair Hearing office issues a hearing decision adverse to the Member; or
4. The time period or service limits of a previously authorized service have been met (10 CCR 2505-10 § 8.209.4.T).

- P. If the final resolution of the Appeal upholds BHI's Action, BHI may recover the cost of the services furnished to the Member while the Appeal was pending, to the extent that the services were furnished solely because of the requirements of this section (10 CCR 2505-10 § 8.209.4 and 42 CFR 438.420) (10 CCR 2505-10 § 8.209.4.U).
- Q. If BHI or the State Fair Hearing officer reverses a decision to deny authorization of services and the member received the disputed services while the appeal was pending, BHI must pay for those services.
- R. If the final resolution of the Appeal reverses BHI's Action to deny, limit or delay services that were not furnished while the Appeal was pending, BHI will authorize and/or provide the disputed services promptly and as expeditiously as the Member's health condition requires (10 CCR 2505-10 § 8.209.4.V).
- S. BHI maintains a record of Appeals and submits a quarterly report to the Colorado Department of Health Care Policy and Finance (HCPF) (10 CCR 2505-10 § 8.209.3.C) (see UM-804 Attachment – Quarterly Grievance and Appeals Report Template).

V. Attachments:

- UM-804 Attachment – Designated Client Representative (DCR) Form
- UM-804 Attachment – Standard Appeal Request Acknowledgement
- UM-804 Attachment – Expedited Appeal Request Denied
- UM-804 Attachment – Appeal Extension Request
- UM-804 Attachment – Appeal Panel Resolution Template
- UM-804 Attachment – Quarterly Grievance and Appeals Report Template