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POLICY: 1803, Conduct of Investigations Concerning Persons with Serious Mental Illness

1. PURPOSE:

To establish procedures related to investigations conducted by the Regional Behavioral Health Authorities (RBHAs), the Arizona State Hospital (AzSH) and the Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS).

2. TERMS:

Definitions for terms are located online at <http://www.azdhs.gov/bhs/definitions/index.php>
The following terms are referenced in this section:

Abuse
Administrative Appeal
Appeal
Condition Requiring Investigation
Dangerous
Grievance or Request of Investigation
Inhumane
Illegal
Mental Health Agency
Preponderance of Evidence
Special Assistance

3. PROCEDURES:

ADHS/DBHS conducts investigations into allegations of physical abuse, sexual abuse, violations of rights, and conditions that are dangerous, illegal, or inhumane. Investigations may also be conducted in the event of a client death that occurs in a mental health agency or as a result of an action of a person employed by a mental health agency. Investigations conducted pursuant to this policy are only conducted when the person receiving services is enrolled as a person with a Serious Mental Illness (SMI).

This policy does not apply to grievances or requests for investigation asserted by, or on behalf of, persons 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 those services, supports and/or treatment that are no longer funded by the State due to limitations on legislative appropriation.

a. General Requirements

- i Persons requesting or receiving services shall be notified of their right to file grievances or request investigations according to the requirements set forth in [Policy 1804, SMI and Non-SMI/Non-Title XIX/XXI Notice and Appeal Requirements](#).

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- ii ADHS/DBHS, the T/RBHAs, and the AzSH, shall respond to grievances and requests for investigations in accordance with this policy and the requirements and timelines contained in [9 A.A.C. 21, Article 4.](#)
 - iii Computation of Time – 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 must not be included in the computation.
 - iv The ADHS/DBHS, the RBHA, or the AzSH shall use the unique ADHS/DBHS Docket Number auto-generated by the Office of Grievance and Appeals (OGA) database for each appeal filed. The file and all correspondence generated shall reference the ADHS/DBHS Docket Number.
- b. Agency Responsible for Resolving Grievances and Requests for Investigation Properly Submitted Under this Policy.
- i Grievances involving an alleged rights violation, or a request for investigation involving an allegation that a condition requiring investigation exists, which occurred in an agency operated by the RBHA or one of its subcontracted providers, or the AzSH, and which does not involve a client death or an allegation of physical or sexual abuse, shall be filed with and investigated by the RBHA, or the AzSH. Such grievances or requests for investigation that occurred in an agency operated by a TRBHA or its subcontracted providers shall be filed with and investigated by the ADHS/DBHS.
 - ii Grievances or requests for investigation involving physical or sexual abuse or death that occurred in the AzSH, an agency which is operated by a T/RBHA or one of its subcontracted providers or as a result of an action of a person employed by a T/RBHA or one of its subcontracted providers shall be addressed to the ADHS/DBHS and investigated by the ADHS/DBHS.
 - iii Grievances involving a rights violation, or a request for investigation involving an allegation that a condition requiring investigation exists and which occurred in an agency that is not the AzSH, a RBHA, TRBHA or their subcontracted providers shall be addressed to the appropriate regulatory division or agency.
 - iv The ADHS/DBHS' Deputy Director, or designee, the RBHA Chief Executive Officer (CEO), TRBHA Director, or the Chief Executive Officer of the AzSH, 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 client, complainant or witness.
- c. Grievance/Request for Investigation Process
- (1) Timeliness and Method for Filing Grievances

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- (a) Grievances or a request for investigation must be submitted to ADHS/DBHS, the AzSH, or the RBHA, 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 the ADHS/DBHS' Deputy Director, or designee, the RBHA Director or CEO of the AzSH, before whom the grievance or request for investigation is pending.
 - (b) Within five days of receipt of a grievance or request for investigation, the ADHS/DBHS, the AzSH, or the RBHA, must 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 ADHS/DBHS, the AzSH, a T/RBHA or its subcontracted provider, 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.
 - (d) All oral grievances and requests for investigation must be accurately reduced to writing by the ADHS/DBHS, the AzSH, the T/RBHA or its subcontracted provider, that receives the grievance or request, on the ADHS/DBHS Appeal or SMI Grievance Form ([See Policy Form 1803.1](#)).
- (2) Preliminary Disposition
- (a) Summary Disposition – ADHS/DBHS, the AzSH, or the RBHA Director or designee, may summarily dispose of a grievance or request for investigation, which shall not include any notice or right for further review or hearing, when:
 - (i) The alleged violation occurred more than one year prior to the date of request; or
 - (ii) The grievance 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 described in [9 A.A.C. 21, Articles 3 and 4](#).
- (3) Disposition without investigation
- (a) Within seven days of receiving a grievance or request for investigation, the ADHS/DBHS, the AzSH, or the RBHA Director or designee, may resolve the matter without conducting a full investigation when:
 - (i) The matter involves no material dispute as to the facts alleged in the grievance or request for investigation;
 - (ii) The allegation is frivolous, meaning that it:
 - 1. (Involves conduct that is not within the scope of Title 9, Chapter 21;
 - 2. Is impossible on its face; or

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3. 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
 - (iii) Is resolved fairly and efficiently within seven days without a formal investigation.
 - (b) Within seven days of the grievance or request for investigation, the ADHS/DBHS, the AzSH, or the RBHA Director or designee, shall prepare a written dated decision which shall explain 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 ADHS/DBHS 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 and to the ADHS/DBHS OHR for persons who need special assistance.
- (4) Conducting Investigations of Grievances – ADHS/DBHS, the AzSH, and the RBHAs shall conduct the investigation pursuant to [A.A.C. R9-21-406](#).
 - (a) If an extension of any time frame related to the [grievance process in A.A.C. R9-21, Article 4](#) is needed; it must be requested and approved in compliance with [A.A.C. R9-21-410\(B\)](#). Specifically:
 - (i) The RBHA investigator or any other RBHA official responsible for responding to grievances must address their extension request to the RBHA Director or designee.
 - (ii) The ADHS/DBHS investigator or any other ADHS/DBHS official responsible for responding to grievances must address their extension request to the ADHS/DBHS Deputy Director or designee; and
 - (iii) A RBHA 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 ADHS/DBHS decisions relating to a grievance shall be addressed to the ADHS/DBHS Deputy Director or designee.
- (5) For grievance investigations into allegation of rights violations, or physical or sexual abuse, the investigator shall:
 - (a) 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.
 - (b) If the person who is the subject of the investigation needs special assistance, the investigator shall contact the person's advocate; or if no advocate is assigned, the person shall contact ADHS/DBHS OHR, and request that an advocate be present to assist the person during the interview and any other part of the investigation process.

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- (c) Request assistance from the ADHS/DBHS OHR if the person identified as the subject needs assistance to participate in the interview and any other part of the investigation process.
- (d) Prepare a written report that contains at a minimum:
 - (i) A summary for each individual interviewed of information provided by the individual during the interview conducted;
 - (ii) A summary of relevant information found in documents reviewed;
 - (iii) A summary of any other activities conducted as a part of the investigation;
 - (iv) 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;
 - (v) A conclusion, based on the facts obtained in the investigation, that the alleged violation or abuse is either substantiated or not substantiated based on a preponderance of the evidence. The conclusion must describe those findings and/or factors that led to this determination; and
 - (vi) Recommended actions or a recommendation for required corrective action, if indicated.
- (6) Within 5 days of receipt of the investigator's report, ADHS/DBHS's Deputy Director, or designee, the RBHA Director, or the CEO of AzSH shall review the investigation case record, and the report, and issue a written, dated decision which shall either:
 - (a) Accept the report and state a summary of findings and conclusions and any action or corrective action required of AzSH, the RBHA or TRBHA Director, and send copies of the decision, subject to confidentiality requirements provided for in [Policy 1401, Confidentiality](#) to the investigator, AzSH, the RBHA or the TRBHA Director, the person who filed the grievance, the person receiving services identified as the subject of the violation or abuse (if different), the ADHS/DBHS Office of Human Rights for persons deemed in need of Special Assistance. The decision sent to the grievant and the person who is the subject of the grievance (if different) shall include a notice of the right to request an administrative appeal of the decision within 30 days from the date of receipt of the decision. The decision must be sent to the grievant by certified mail or by hand-delivery.
 - (b) Reject the report for insufficiency of facts and return the matter for further investigation. The investigator must complete the further investigation and deliver a revised report to ADHS/DBHS's Deputy Director, or designee, the RBHA Director, or the Chief Executive Officer of the AzSH within 10 days.
- (7) ADHS/DBHS's Deputy Director, or designee, the RBHA Director, or the CEO of the AzSH may identify actions to be taken, as indicated in (c)(1) above, which may include:

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- (a) 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 of a grievance or request for investigation;
 - (b) Developing or modifying a mental health agency's practices or protocols;
 - (c) Notifying the regulatory entity that licensed or certified an individual according to [A.R.S. Title 32, Chapter 33](#) of the findings from the investigation; or
 - (d) Imposing sanctions, which may include monetary penalties, according to the terms of a contract, if applicable.
- (8) A grievant or the client who is the subject of the grievance, who disagrees with the final decision of the RBHA or AzSH, may file a request for an administrative appeal within 30 days from the date of their receipt of the RBHA or AzSH decision. The request for administrative appeal must specify the basis for the disagreement. Failure to specify the basis for the disagreement may result in a summary determination in favor of the RBHA or AzSH decision.
- (9) In the event an administrative appeal is filed, the RBHA, or AzSH, shall forward the full investigation case record, which includes all elements in [A.A.C. R9-21-409\(D\)\(1\)](#), to ADHS/DBHS's Deputy Director, or designee through the ADHS/DBHS OGA. The failure of the RBHA or AzSH to forward a full investigation case record that supports the RBHA or AzSH decision may result in a summary determination in favor of the person filing the administrative appeal. The RBHA or AzSH shall prepare and send with the investigation case record, a memo in which the RBHA states:
 - (a) Any objections AzSH or the RBHA has to the timeliness of the administrative appeal,
 - (b) AzSH's, or the RBHA's response to any information provided in the administrative appeal that was not addressed in the investigation report, and
 - (c) The AzSH's or the RBHA's understanding of the basis for the administrative appeal.
- (10) Within 15 days of the filing of the administrative appeal, ADHS/DBHS's Deputy Director, or designee, will 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 prepare a written, dated decision which shall either:
 - (a) Accept the investigator's report with respect to the facts as found, and affirm, modify or reject the decision of the agency director 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 AzSH or RBHA Director, as indicated; the OHR and the applicable human rights committee; or
 - (b) Reject the investigator's report for insufficiency of facts and remand the matter with instructions to the RBHA or AzSH for further investigation and

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decision. The RBHA or AzSH shall conduct further investigation and complete a revised report and decision to ADHS/DBHS's Deputy Director or designee within 10 days. Upon receipt of the report and decision, ADHS/DBHS shall render a final decision consistent with the procedures described in section g.(1) above; or;

- (c) Reject the RBHA's decision and remand the matter with instructions to the RBHA or AzSH to conduct an investigation, or to conduct further investigation, issue an initial, or revised, decision, , and include a notice of the right of the grievant or client who is the subject of the grievance to request an administrative appeal to ADHS/DBHS of the decision within 30 days from the date of receipt of the decision, consistent with the requirements in [A.A.C. R9-21-406, et. seq.](#)
- (11) A grievant or person who is the subject of the grievance who is dissatisfied with the decision of ADHS/DBHS's Deputy Director, or designee may request an administrative hearing before an administrative law judge within 30 days of the date of the decision.
- (12) 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.](#)
- (13) After the expiration of the time frames for administrative appeal and administrative hearing as described above, or after the exhaustion of all appeals regarding outcome of the investigation, the RBHA, TRBHA or AzSH Director, or the Deputy Director, or designee of the ADHS/DBHS, 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 ADHS/DBHS OHR for persons in need of Special Assistance. Conducting Investigations of Conditions Requiring Investigation – The investigation shall be conducted in the same manner described above in section G.3. of this policy.
- ii Unless an investigation request is made pursuant to [A.A.C. R9-21-403\(A\)](#) or [R9-21-403\(B\)](#), investigations into the deaths of persons receiving services shall be conducted as described in [Policy 1703, Reports of Incidents, Accidents and Deaths.](#)
- iii Grievance Investigation Records and Tracking System – ADHS/DBHS AzSH, and the RBHA will maintain records in the following manner:
 - (1) All documentation received and mailed related to the grievance and investigation process will be date stamped on the day received.
 - (2) ADHS/DBHS, AzSH, and the RBHA will maintain a grievance investigation case record for each case. The record shall include:
 - (a) The docket number assigned according to section F.4 of this policy;
 - (b) The original grievance/investigation request letter and the ADHS/DBHS Appeal or SMI Grievance Form;
 - (c) Copies of all information generated or obtained during the investigation;
 - (d) The investigator's report which will include a description of the grievance issue, documentation of the investigative process, names of all persons

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- interviewed, written documentation of the interviews, summary of all documents reviewed, the investigator's findings, conclusions and recommendations;
- (e) A copy of the acknowledgment letter, final decision letter and any information/documentation generated by an appeal of the grievance decision.
- (3) ADHS/DBHS, AzSH, and the RBHA will maintain all grievance and investigation files in a secure designated area and retain for at least 5 years.
 - (4) The Public Log – ADHS/DBHS OGA, the RBHAs and AzSH will maintain a public log of all grievances or requests for investigation in ADHS/DBHS's OGA Database which shall be considered the public record. Entry must be made within three (3) working days of each reportable event. The Public Log will contain the following information:
 - (a) A docket number;
 - (b) A description of the grievance or request for investigation issue;
 - (c) The date of the filing of grievance;
 - (d) The date of the initial decision or appointment of the investigator;
 - (e) The date of the filing of the investigator's final report;
 - (f) The dates of all subsequent decisions, appeals or other relevant events;
 - (g) A description of the final decision and any actions taken by the ADHS/DBHS Deputy Director, or designee, the RBHA Director, or the CEO of AzSH.
- d. Other Matters Related to the Grievance Process:
- i Pursuant to the applicable statutes and [Policy 1401, Confidentiality](#), AzSH, the RBHA or TRBHA shall maintain confidentiality and privacy of grievance matters and records at all times.
 - ii 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. ([Policy 1703, Reports of Incidents, Accidents and Deaths](#))
 - iii AzSH, the RBHA or TRBHA shall notify the Deputy Director, or designee of ADHS/DBHS when (see [Policy 1703, Reports of Incidents, Accidents and Deaths](#)):
 - (1) A person receiving services files a complaint with law enforcement alleging criminal conduct against an employee;
 - (2) An employee or contracted staff files a complaint with law enforcement alleging criminal conduct against a person receiving services;
 - (3) 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.

4. REFERENCES:

[A.R.S. §1-254](#)
[A.R.S. §36-502.D](#)

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[A.R.S. § 41-1092 et seq.](#)

[A.R.S. Title 32; Chapter 33](#)

[A.A.C. R9-21-101\(B\)](#)

[A.A.C. R9-21-103](#)

[9 A.A.C. 21, Articles 3 and 4](#)

[Policy 1703, Reports of Incidents, Accidents and Deaths](#)

[Policy 1801, Title XIX/XXI Notice and Appeal Requirements](#)

[Policy 1804, SMI and Non-SMI/Non-Title XIX/XXI Notice and Appeal Requirements](#)