

MEDICAID POLICY INFORMATION SHEET

Policy Analyst: Heather Hill

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Initial

Public Comment

Final

Brief description of policy:

This policy describes the process related to appeals for involuntary discharges in provider owned/controlled residential settings (e.g., Adult Foster Care, Homes for the Aged, unlicensed assisted living, etc.) for individuals enrolled in one of the affected programs. This policy is in response to requirements under the Home and Community Based Services (HCBS) Final Rule released by the Centers for Medicare & Medicaid Services (CMS).

Reason for policy (problem being addressed):

To update the HCBS Medicaid Provider Manual chapter to comply with the HCBS Final Rule.

Budget implication:

- budget neutral
 will cost MDHHS \$, and (select one) budgeted in current appropriation
 will save MDHHS \$

Is this policy change mandated per federal requirements?

Yes - Section 1915(c) of the Social Security Act and CMS 2249-F/2296-F.

Does policy have operational implications on other parts of MDHHS?

Yes - MI Choice Waiver, MI Health Link HCBS Waiver, Habilitation Supports Waiver, Managed Specialty Services & Supports Waiver.

Does policy have operational implications on other departments?

Yes, the Department of Licensing and Regulatory Affairs (LARA)/MOAHR will be involved in the appeal process if appeals are requested. MOAHR staff assisted with development of the notices and appeal request.

Summary of input:

- controversial
 acceptable to most/all groups
 limited public interest/comment

Supporting Documentation:

State Plan Amendment Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, please provide status: <input type="checkbox"/> Approved <input type="checkbox"/> Pending <input type="checkbox"/> Denied Date: Approval Date:	Public Notice Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, Submission Date:
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DRAFT FOR PUBLIC COMMENT Michigan Department of Health and Human Services		
	Project Number: 2225-HCBS	Date: October 6, 2022

Comments Due: November 10, 2022
Proposed Effective Date: January 1, 2023
Direct Comments To: Heather Hill
Address:
E-Mail Address: Hillh3@michigan.gov
Phone: 517-241-3999 **Fax:**

Policy Subject: Appeals for Involuntary Discharges for Home and Community-Based Services (HCBS) Programs

Affected Programs: MI Choice Waiver, MI Health Link HCBS Waiver, Habilitation Supports Waiver, Managed Specialty Services & Supports Waiver

Distribution: MI Choice Waiver Agencies, Prepaid Inpatient Health Plans, Integrated Care Organizations

Summary: This policy describes the process related to appeals for involuntary discharges or transfers in provider owned/controlled residential settings (e.g., Adult Foster Care, Homes for the Aged, unlicensed assisted living, etc.) for individuals enrolled in one of the affected programs. This policy is in response to requirements under the HCBS Final Rule released by the Centers for Medicare & Medicaid Services (CMS).

Purpose: To comply with the HCBS Final Rule.

Cost Implications: Budget neutral

Potential Hearings & Appeal Issues: There may be appeals forthcoming related to involuntary discharges or transfers.

State Plan Amendment Required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, date submitted:	Public Notice Required: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Submitted date:
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Tribal Notification: Yes No - **Date:**

THIS SECTION COMPLETED BY RECEIVER

<input type="checkbox"/> Approved	<input type="checkbox"/> No Comments
<input type="checkbox"/> Disapproved	<input type="checkbox"/> See Comments Below
	<input type="checkbox"/> See Comments in Text

Signature:	Phone Number
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Signature Printed:

Bureau/Administration *(please print)*

Date

Comment001

Revised 6/16

Proposed Policy Draft

Michigan Department of Health and Human Services
Behavioral & Physical Health and Aging Services Administration

Distribution: MI Choice Waiver Agencies, Prepaid Inpatient Health Plans, Integrated Care Organizations

Issued: December 1, 2022 (Proposed)

Subject: Appeals for Involuntary Discharges for Home and Community-Based Services (HCBS) Programs

Effective: January 1, 2023 (Proposed)

Programs Affected: MI Choice Waiver, MI Health Link HCBS Waiver, Habilitation Supports Waiver, Managed Specialty Services & Supports Waiver

This policy provides additional requirements pertaining to appeals for involuntary discharges to be added to the Home and Community Based Services Chapter of the [Michigan Department of Health and Human Services \(MDHHS\) Medicaid Provider Manual](#). This policy change is required to comply with federal requirements for HCBS programs.

On January 16, 2014, the Centers for Medicare & Medicaid Services (CMS) issued the HCBS Final Rule (CMS 2249-F/2296-F). The HCBS Final Rule specifies requirements for programs that offer HCBS to Medicaid beneficiaries and includes requirements that individuals receiving Medicaid HCBS must be allowed protections comparable to State landlord tenant laws for residential settings that do not otherwise fall under those laws. This policy establishes the resident notification and appeals procedures related to non-emergency involuntary discharge and emergency involuntary discharge for provider owned/controlled residential settings.

As applicable, all providers of the affected programs must comply with these requirements.

Appeals for Involuntary Discharges

Non-Emergency Involuntary Discharge

(1) An individual who receives HCBS must not be involuntarily discharged by a residential setting without 30 calendar days advance written notice to the individual, the legal representative of the individual, and the placing agency stating the reasons for the non-emergency involuntary discharge. The placing agency must provide the individual and the legal representative of the individual with information in writing about the individual's rights to request a hearing which will be held in accordance with the Michigan Office of Administrative Hearings and Rules (MOAHR) Uniform Hearing Rules R 792.11001-792.11018. Individuals may only be involuntarily discharged by a residential setting for the following reasons:

- (a) Behavior that poses a significant danger to the individual or others;
- (b) The care needs of the individual exceed the ability of the provider; or
- (c) Failure to make payment for care and services.

(2) The notice required by subsection (1) must be on the Notice of Non-Emergency Involuntary Discharge (MDHHS-5897) form and completed in its entirety by a representative from the residential setting. The Notice must include a copy of the Request to Appeal a Notice of Involuntary Discharge form (MDHHS-5899).

(3) The individual has the right to request a hearing to challenge the decision to discharge against his or her wishes. The individual or legal representative may file a request for a hearing utilizing MDHHS-5899 with the Michigan Office of Administrative Hearings and Rules (MOAHR) within 10 calendar days after receiving the notice indicated above (MDHHS-5897). If a hearing is requested, it will be held within seven calendar days after the request is received by MOAHR. The residential setting cannot discharge an individual during that time. If the individual loses the hearing, there will be no discharge until at least 30 calendar days after the individual received the notice of discharge.

(4) The individual has an opportunity to review any proposed placement prior to a discharge.

Emergency Involuntary Discharge

(1) An individual who receives HCBS can receive an emergency involuntary discharge in the following situations:

- (a) Substantial risk to the individual due to the inability of the residential setting to meet the individual's needs or ensure the safety and well-being of other residents of the residential setting;
- (b) Substantial risk, or occurrence of self-destructive behavior; or
- (c) Substantial risk, or occurrence of destruction of property.

(2) Before discharging an individual for an emergency involuntary discharge, the residential setting must consult with the placing agency regarding the proposed emergency involuntary discharge to determine if additional services and supports can be provided to avoid the need for an emergency involuntary discharge.

(3) The residential setting must notify in writing the individual, the individual's legal representative, the placing agency and the adult foster care licensing consultant not less than 24 hours before the discharge. This notice must be on the Notice of Emergency Involuntary Discharge (MDHHS-5898) form and completed in its entirety by a representative from the residential setting. The notice must include a copy of the Request to Appeal a Notice of Involuntary Discharge form (MDHHS-5899)

(4) The individual or legal representative has the right to request a hearing to challenge the decision to discharge against his or her wishes. The placing agency must provide the individual and the legal representative of the individual with information in writing about the individual's rights to request a hearing which will be held in accordance with the Michigan

Office of Administrative Hearings and Rules (MOAHR) Uniform Hearing Rules R 792.11001-792.11018. The individual or legal representative may file a request for a hearing (MDHHS-5899) with MOAHR within 10 calendar days after receiving this notice (MDHHS-5898). If a hearing is requested, it will be held within seven calendar days after the request is received by MOAHR.

(5) The individual cannot be discharged until an appropriate setting is found that meets the individual's needs.

(6) If the individual requests a hearing with MOAHR challenging the emergency involuntary discharge and MOAHR finds the individual was improperly discharged, the individual has the right to elect to return to the first available bed in the residential setting.