




Section: <b>Customer Services</b>	Policy Name: <b>Customer Appeal System</b>	Policy Number: <b>06.04</b>
Owner: <b>Customer Services Manager</b>	Reviewed By: <b>Sarah Ameter</b>	Total Pages: <b>17</b>
Required By: <input checked="" type="checkbox"/> BBA <input checked="" type="checkbox"/> MDHHS <input type="checkbox"/> NCQA <input checked="" type="checkbox"/> <b>Other (please specify):</b> <b>Michigan Mental Health Code</b>	Final Approval By:  <small>Sarah Ameter (Nov 12, 2024 10:29 EST)</small>	Date Approved:  <b>Nov 12, 2024</b>
Application: <input checked="" type="checkbox"/> SWMBH Staff/Ops <input checked="" type="checkbox"/> Participant CMHSPs <input checked="" type="checkbox"/> SUD Providers <input checked="" type="checkbox"/> MH/IDD Providers <input type="checkbox"/> <b>Other (please specify):</b> <hr/>	Line of Business: <input checked="" type="checkbox"/> Medicaid <input type="checkbox"/> <b>Other (please specify):</b> <input checked="" type="checkbox"/> <b>Healthy Michigan</b> _____ <input type="checkbox"/> SUD Block Grant <input checked="" type="checkbox"/> SUD Medicaid	Effective Date: <b>10/1/24</b>

**Policy:** All enrollees have the right to a fair and efficient process for resolving complaints regarding their services and supports managed and/ or delivered by Prepaid Inpatient Health Plans (PIHPs) and their participant Community Mental Health Service Programs (CMHSPs). An enrollee of, or applicant for, public mental health specialty services and supports may access several options to pursue the resolution of a grievance or appeal. All policies and procedures related to the grievance, appeals, and second opinion processes are available, upon request, to any customer, provider, or facility rendering service free of charge. Southwest Michigan Behavioral Health (SWMBH) participant CMHSPs will handle and process complaints in ways consistent with the policies set forth by SWMBH.

The Due Process Clause of the U.S. Constitution guarantees that Medicaid enrollees must receive “due process” whenever benefits are denied, reduced, suspended, or terminated. Due Process includes: (1) prior written notice of the adverse action (2) a fair hearing before an impartial decision maker (3) continued benefits pending a final decision and (4) a timely decision, measured from the date the complaint is first made. Nothing about managed care changes these due process requirements. The Medicaid Enrollee Grievance and Appeal System provides a process to help protect Medicaid Enrollee due process rights.

According to 42 CFR 438.408, SWMBH must resolve each grievance an appeal, and provide notice, as quickly as the enrollee’s health condition requires, within State-established timeframes that may not exceed the timeframes specified in 42 CFR 438.408.

Customers of mental health and substance use disorder services who are Medicaid enrollees eligible for Specialty Supports and Services have various avenues available to them to resolve



disagreements or complaints. There are several processes under authority of the Social Security Act and its federal regulations that articulate federal requirements regarding grievances and appeals for Medicaid enrollees who participate in managed care:

- State Fair Hearings through authority of 42 CFR 431.200 et seq.
- PIHP Appeals through authority of 42 CFR 438.400 et seq.
- Local grievances through authority of 42 CFR 438.400 et seq.
- Second Opinion through authority of 42 CFR 438.206 et. seq.

Medicaid enrollees, as public mental health consumers, have rights and dispute resolution protections under authority of the State of Michigan Mental Health Code, Chapters 2, 7, 7A, 4, and 4A, including:

- Mediation through authority of the Mental Health Code (MCL 330-1206a et seq.)
- Recipient Rights complaints through authority of the Mental Health Code (MCL 330.1772 et seq.)
- Second Opinion through authority of the Mental Health Code (MCL 330.1705 and MCL 330.1409 et seq.)

Southwest Michigan Behavioral Health and its participant CMHSPs will comply with the office of Civil Rights Policy Guidance on the Title VI Prohibition against Discrimination as it affects Persons with Limited English Proficiency (LEP) when they provide written notices to customers and engage in resolution processes. In addition, Southwest Michigan Behavioral Health (SWMBH) and its participant CMHSPs will provide reasonable assistance to persons who have illiteracy, hearing, or visual impairments.

**Purpose:** To ensure the appeal system for Medicaid enrollee's, to include funding sources: Healthy Michigan Plan (HMP) and Home and Community Based Services (HCBS) going forth, promotes the resolution of the customer's concerns while supporting and enhancing the overall goal of improving quality of care.

**Scope:** Customer Services

**Responsibilities:** SWMBH Customer Service Department and delegated entities, as applicable, shall ensure compliance with the standards and guidelines outlined in this policy and guiding documents.

**Definitions:**

- A. Adverse Benefit Determination: A decision that adversely impacts the Medicaid Enrollee's claim for services due to:
1. 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.
  2. Reduction, suspension, or termination of a previously authorized service.
  3. Denial, in whole or in part, of payment for a service. A denial, in whole or in part, of a payment for a service solely because the claim does not meet the definition of a "clean claim" is not an adverse benefit determination.



4. Failure to make a standard Service Authorization decision and provide notice about the decision within 14 calendar days from the date of receipt of a standard request for service.
  5. Failure to make an expedited Service Authorization decision within seventy-two (72) hours after receipt of a request for expedited Service Authorization.
  6. Failure to provide services within 14 calendar days of the start date agreed upon during the person-centered planning (PCP) meeting and as authorized by the PIHP.
  7. Failure of the PIHP to resolve standard appeals and provide notice within 30 calendar days from the date the standard appeal request is received by the PIHP.
  8. Failure of the PIHP to resolve expedited appeals and provide notice within 72 hours from the date the expedited appeal request is received by the PIHP.
  9. Failure of the PIHP to resolve grievances and provide notice within 90 calendar days of the date the grievance is received by the PIHP.
  10. For a resident of a rural area with only one Managed Care Organization (MCO), the denial of the Enrollee's request to exercise his/her right, under § 438.52(b)(2)(ii), and to obtain services outside the network.
  11. Denial of the Enrollee's request to dispute a financial liability, including cost-sharing, copayments, premiums, deductibles, coinsurance, and other Enrollee financial responsibility.
- B. Adequate Notice of Adverse Benefit Determination: Written statement advising the enrollee of a decision to deny or limit authorization of Medicaid services requested and the reasons why. The PIHP must mail the notice within timeframes identified in the Code of Federal Regulations (CFR) and written in an easily understood manner.
- C. Advance Notice of Adverse Benefit Determination: Written statement advising the enrollee of a decision to reduce, suspend, or terminate Medicaid services currently provided, which notice must be provided to the Medicaid enrollee at least 10 calendar days prior to the proposed date the Adverse Benefit Determination takes effect.
- D. Appeal: A review at the local level of an adverse benefit determination.
- E. Authorization of Services: The processing of requests for initial and continuing service delivery.
- F. Expedited Appeal: The expeditious review of an Adverse Benefit Determination, requested by the enrollee or the enrollee's provider, when the appropriate party determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life, physical or mental health, or ability to attain, maintain, or regain maximum function. If the enrollee requests the expedited review, the PIHP determines if the request is warranted. If the enrollee's provider makes the request, or supports the enrollee's request, the PIHP must grant the request.
- G. Grievance and Appeal System: the processes the PIHP/CMHSP implements to handle appeals of an adverse benefit determination and grievances, as well as the processes to collect and track information about them.
- H. Second Opinion: the process for having a second qualified person (clinician, doctor) assess a case to determine if they agree with the opinion or recommendation of the original staff.
- I. Service Authorization: The PIHP processing of requests for initial and continuing authorization of services, either approving or denying as requested, or authorizing in an amount, duration, or scope less than requested, all as required under applicable law, including but not limited to 42 CFR 438.210.



- J. State Fair Hearing: Impartial state level review of an enrollee's appeal of an adverse benefit determination presided over by a MDHHS Administrative Law Judge.
- K. Timely Files: means files for continuation of benefits on or before the later of the following:
  - 1. Within 10 calendar days of the MCO, PIHP, or PAHP sending the notice of adverse benefit determination.
  - 2. The intended effective date of the MCO's, PIHP's, or PAHP's proposed adverse benefit determination.

**Standards and Guidelines:**

- A. Federal regulation (42 CFR 438.228) requires the state to ensure through its contracts with PIHPs/CMHSPs, that each PIHP/CMHSP has a grievance and appeal system in place for enrollee's that complies with Subpart F of Part 438.
- B. The appeal system must provide Medicaid enrollees:
  - 1. An Appeal process (one level, only) which enables Enrollees to challenge Adverse Benefit Determinations made by the PIHP or its agents.
  - 2. The right to concurrently file an Appeal of an Adverse Benefit Determination and a Grievance regarding other service complaints.
  - 3. Access to the State Fair Hearing process to further appeal an Adverse Benefit Determination, after receiving notice that the Adverse Benefit Determination has been upheld by the PIHP level Appeal.
  - 4. Information that if the PIHP fails to adhere to notice and timing requirements as outlined in PIHP Appeal Process, the Enrollee is deemed to have exhausted the PIHP's appeals process. The Enrollee may initiate a State fair hearing.
  - 5. The right to request, and have, Medicaid covered benefits continued while a local PIHP Appeal and/or State Fair Hearing is pending.
  - 6. With the written consent from the Enrollee, the right to have a provider or other authorized representative, acting on the Enrollee's behalf, file an Appeal to the PIHP, or request a State Fair Hearing. The provider may file an appeal or request a State Fair Hearing on behalf of the Enrollee with written permission, since the State permits the provider to act as the Enrollee's authorized representative in doing so. Punitive action may not be taken by the PIHP against a provider who acts on the Enrollee's behalf with the Enrollee's written consent to do so.
- C. Service Authorization Decision Timeframes: When a Medicaid service authorization is processed (initial request or continuation of service delivery) SWMBH and its participant CMHSPs/providers must provide the enrollee written service authorization decision within specified time frames and as expeditiously as the enrollee's health condition requires. SWMBH and CMHSPs cannot delay the service authorization decision based upon the availability of providers. The service authorization must meet the requirements for either standard authorization or expedited authorization:
  - 1. Standard Authorization: Notice of the authorization decision that denies or limits services must be provided to the enrollee within 14 calendar days following the receipt of a request for a service.
  - 2. Expedited Authorization: In cases which the provider indicates, or SWMBH and its participant CMHSPs/provider determines that following the standard timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, SWMBH and its participant CMHSPs/provider must make an expedited



authorization decision and provide notice of the decision that denies or limits services within 72 hours after receipt of the request for expedited authorization decision.

3. Extensions of Timeframes: If the enrollee requests an extension; or if SWMBH and its participant CMHSPs/provider justifies (to the state agency upon request) a need for additional information and how the extension is in the enrollee's best interest, SWMBH and its participant CMHSPs/provider may extend the 14 calendar daytime period by up to 14 additional calendar days. When a standard or expedited authorization of decision timeframe is extended not at the request of the enrollee, SWMBH/CMHSPs must
  - a. Make reasonable efforts to give the enrollee prompt oral notice of the delay.
  - b. Within 2 calendar days, provide the member written notice of the reason for the decision to extend the time frame and inform the enrollee of the right to file a grievance if he/ she disagrees with that decision.
  - c. The PIHP/CMHSP must issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

D. Notice of Adverse Benefit Determination: SWMBH and its participant CMHSPs/providers are required to provide timely and "adequate" notice of any Adverse Benefit Determination. An Adverse Benefit Determination must be provided when a service authorization decision constitutes an "action" by authorizing a service in the amount, duration, or scope less than currently authorized, or the service authorization is not made timely. In these situations, SWMBH and its participant CMHSPs/provider must provide an Adverse Benefit Determination containing additional information to inform the enrollee of the basis for the action the PIHP/CMHSP has taken or intends to take and the process available to appeal the decision.

1. Required Recipients of Notice of Adverse Benefit Determination
  - a. The enrollee, guardian, or parent of minor must be provided written notice.
  - b. The requesting provider must be provided notice of any decision by the PIHP/CMHSP to deny a Service Authorization request or to authorize a service in an amount, duration or scope that is less than requested. Notice to the provider does NOT need to be in writing.
  - c. If the utilization review function is not performed within an identified organization, program or unit (access centers, prior authorization unit, or continued stay units), any decision to deny, suspend, reduce or terminate a service occurring outside of the person-centered planning process still constitutes an action, and requires a written notice of action.
2. Notice of Adverse Benefit Determination includes:
  - a. The enrollee notice must be in writing and must meet the requirements of 42 CFR 438.10 (i.e., "...manner and format that may be easily understood and is readily accessible by such enrollees and potential enrollees," and meets the needs of those with limited English proficiency and/or limited reading proficiency.) and CFR 438.404.
  - b. Notification that 42 CFR 440.230(d) provides the basic legal authority for an agency to place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

- c. Description of Adverse Benefit Determination the PIHP/CMHSP has made or intends to make;
  - d. The reason(s) for the Adverse Benefit Determination, including the right of the enrollee to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the enrollee's adverse benefit determination. Such information includes medical necessity criteria and any processes, strategies, or evidentiary standards used in setting coverage limits.
  - e. Notification of the Enrollee's right to request an Appeal of the adverse benefit determination, including information on exhausting the PIHP/CMHSP's single local appeal process, and the right to request a State Fair Hearing thereafter.
  - f. Description of the circumstances under which an Appeal can be expedited, and how to request an Expedited Appeal;
  - g. Notification of the Enrollee's right to have benefits continue pending resolution of the Appeal, instructions on how to request benefit continuation, and a description of the circumstances (consistent with State policy) under which the Enrollee may be required to pay the costs of the continued services (only required when providing "Advance Notice of Adverse Benefit Determination");
    - i. SWMBH has no defined circumstances that would require an enrollee to repay the cost of continued services during an appeal so long as the "Reinstatement or Continuation of Medicaid Services" (see Sections G&H) qualifications were met.
  - h. Description of the procedures that the Enrollee is required to follow in order to exercise any of these appeal rights; and
  - i. An explanation that the Enrollee may represent himself/herself or use legal counsel, a relative, a friend or other spokesman.
3. Accessibility of Adverse Benefit Determination. Written adverse action notices must also meet the following criteria:
- a. Be translated for the individuals who speak prevalent non-English languages as identified in the PIHP region.
  - b. Include language clarifying that oral interpretation is available for all languages and how the beneficiary can access oral interpretation services.
  - c. Use easily understood language written at or below the 6.9 reading level.
  - d. Use and easily understood format.
  - e. Be available in alternative formats, and in an appropriate manner that takes into consideration those with special needs.
4. Adequate Notice of Adverse Benefit Determination
- a. For a denial of payment for services requested but not currently provided, notice must be provided to the enrollee at the time of the action affecting the claim.
    - i. For more information on Denial of Payment, see SWMBH Claims Policy: "Paper Claims Control" and Procedure: "Non-Network Denial Notification".
  - b. For a Service Authorization decision that denies or limits services, notice must be provided to the enrollee within 14 calendar days following receipt of the request for

- service for standard authorization decisions, or within 72 hours after receipt of a request for an expedited authorization decision.
- c. For Service Authorization Decisions not reached within 14 calendar days for standard request, or 72 hours for an expedited request, (which constitutes a denial and is thus an adverse benefit determination), on the date that the timeframes expire.
  - d. The PIHP may be able to extend the standard (14 calendar days) or expedited (72 hour) Service Authorization timeframes for up to an additional 14 calendar days if either the enrollee requests the extension, or if the PIHP can show that there is a need for additional information and the extension is in the enrollee's best interest. If the PIHP extends the time NOT at the request of the enrollee, the PIHP must:
    - i. Make reasonable efforts to give the enrollee prompt oral notice of the delay;
    - ii. Within 2 calendar days, provide the enrollee written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a Grievance if he/she disagrees with that decision; and
    - iii. Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
5. Advance Notice of Adverse Benefit Determination
- a. Required for reductions, suspensions, or terminations of previously authorized/currently provided Medicaid Services. Must be provided to the enrollee at least 10 calendar days prior to the proposed effective date.
6. There are limited exceptions to the advance notice of Adverse Benefit Determination requirement. SWMBH/CMHSPs may mail an adequate notice of adverse benefit determination, not later than the date of action to terminate, suspend or reduce previously authorized services, if:
- a. The PIHP/CMHSP has verified information confirming the death of the enrollee
  - b. The PIHP/CMHSP receives a clear and written statement signed by the enrollee that he/she no longer wishes services (per 42CFR 321.213(b)(1)); or that gives information that requires termination or reduction of services and indicates that the enrollee understands that this must be the result of supplying that information
  - c. The enrollee has been admitted to an institution where he/she is ineligible under Medicaid for further services
  - d. The enrollee's whereabouts are unknown, and the post office returns PIHP/CMHSP mail directed to the enrollee indicating no forwarding address
  - e. The PIHP/CMHSP establishes that the enrollee has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth
  - f. A change in the level of medical care is prescribed by the enrollee's physician
  - g. The notice involves an adverse determination made with regard to the preadmission screening requirement of section 1919(e)(7) of the SSA.
  - h. The date of the action will occur in less than 10 calendar days.
  - i. PIHP/CMHSPs have facts (preferably verified through secondary sources) indicating that action should be taken because of probably fraud by the enrollee. In this case, the PIHP/CMHSP may shorten the period of advance notice to 5 calendar days before the date of action.



#### E. Local Appeal Process

1. SWMBH/CMHSPs shall comply with federal regulations to provide a Medicaid enrollee the right to a local level appeal of an Adverse Benefit Determination. Each PIHP may only have one level of appeal. The enrollee, or representative of the enrollee, may file an internal appeal, which is the first of two Appeal levels, under the following conditions:
  - a. The enrollee has 60 calendar days from the date of the Adverse Benefit Determination to request a local appeal.
  - b. The Appeal can be requested orally or in writing. Oral inquiries seeking to appeal an adverse benefit determination are treated as appeals (to establish the earliest possible filing date for the Appeal).
  - c. In the circumstances described under section entitled "Continuation of Medicaid Services", SWMBH/CMHSPs will be required to continue/reinstate Medicaid Services while the appeal or state fair hearing is pending, until one of the events described in that section occurs.
  - d. The Medicaid enrollee may file an appeal with the PIHP/CMHSP organizational unit approved and administratively responsible for facilitating local appeals.
2. When a Local Appeal is requested, SWMBH/CMHSPs must:
  - a. Provide the Enrollee any reasonable assistance to complete forms and take other procedural steps. This includes but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.
  - b. Acknowledge receipt of a standard Appeal within five (5) business days and an expedited Appeal within 72 hours of receipt.
  - c. Maintain a record of appeals for review by the PIHP/CMHSP Performance Improvement Program and Customer Services Department, or by the State as part of its quality strategy.
  - d. Ensure that the individual(s) who make the decisions on appeals are individuals:
    - i. Who were not involved in any previous level of review or decision-making, nor a subordinate of any such individual;
    - ii. Who when deciding an Appeal that involves either clinical issues, or a denial based on lack of medical necessity, are individual(s) who have the appropriate clinical expertise, as determined by the State, in treating the Enrollee's condition or disease.
    - iii. Who consider all comments, documents, records, and other information submitted by the Enrollee and/or their representative without regard to whether such information was submitted or considered in the initial Adverse Benefit Determination.
  - e. SWMBH/CMHSPs must provide the enrollee a reasonable opportunity to present evidence, testimony, and allegations of fact or law, in person and in writing. SWMBH/CMHSPs must inform the enrollee of the limited time available for this sufficiently in advance of the resolution timeframe for appeals.



- f. SWMBH/CMHSPs must provide the enrollee and the enrollee's representative the enrollee's case file, including medical records and any other documents or records considered, relied upon, or generated by or at the direction of SWMBH/CMHSP, in connection with the Appeal of the Adverse Benefit Determination. This information must be provided free of charge and sufficiently in advance of the resolution timeframe for appeals.
  - g. SWMBH/CMHSPs must provide opportunity to include as parties to the appeal the enrollee and the enrollee's representative or the legal representative of a deceased enrollee's estate.
  - h. SWMBH/CMHSPs must provide the enrollee with information regarding the right to request a State Fair Hearing and the process to be used to request one. The enrollee can request a State Fair Hearing only after receiving notice that SWMBH/CMHSP is upholding the Adverse Benefit Determination. In the case of SWMBH/CMHSP failing to adhere to the notice and timing requirements of 30 days, the enrollee is deemed to have exhausted the PIHP's appeals process. The enrollee may initiate a State fair hearing.
3. The Notice of Resolution must be provided within the following timeframes:
- a. Standard Appeal Resolution: The PIHP must resolve the appeal and provide notice of resolution to the affected parties as expeditiously as the enrollee's health condition requires, but not to exceed 30 calendar days from the day the PIHP receives the appeal.
  - b. Expedited Appeal Resolution: Each PIHP/CMHSP must establish and maintain an expedited review process for appeals when the PIHP/CMHSP determines (for a request from the enrollee) or the provider indicates (in making a request on the enrollee's behalf or supporting the enrollee's request) that the time for a standard resolution could seriously jeopardize the enrollee's life, physical or mental health, or ability to attain, maintain, or regain maximum function. The PIHP/CMHSP may not take punitive action against a provider who requests an expedited resolution or supports the enrollee's Appeal.
    - i. If granted, the PIHP/CMHSP must resolve the appeal and provide written notice of resolution to the affected parties no longer than 72 hours after the PIHP/CMHSP receives the request for expedited resolution of the appeal.
  - c. If a request for expedited resolution of an appeal is denied, the PIHP/CMHSP must:
    - i. Transfer the appeal to the timeframe for standard resolution;
    - ii. Make reasonable efforts to give the enrollee prompt oral notice of the denial if the PIHP/CMHSP extends the timeframe not at the request of the enrollee;
    - iii. Within 2-calendar days, give the enrollee written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a Grievance if they disagree with the decision; and
    - iv. Resolve the appeal as expeditiously as the enrollee's health condition requires, but not to exceed 30 calendar days.

- d. Extension of Timeframe: The PIHP/CMHSP may extend the resolution and notice timeframe by up to 14 calendar days if the enrollee requests an extension, or if the PIHP/CMHSP shows to the satisfaction of the state (upon request) that there is a need for additional information and how the delay is in the enrollee's interest. The PIHP/CMHSP may not extend the timeframe for appeal decision other than as described in this section. If the resolution timeframe is extended not at the request of the enrollee, the PIHP/CMHSP must complete all the following:
    - i. Make reasonable efforts to give the enrollee prompt oral notice of the delay;
    - ii. Within 2-calendar days, give the enrollee written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a grievance if they disagree with the decision; and
    - iii. Issue and carry out its determination as expeditiously as the enrollee's health condition requires and not later than the date the extension expires.
  - e. If the PIHP/CMHSP fails to adhere to the notice and timing requirements in this section, the enrollee is deemed to have exhausted the local appeals process. The enrollee may initiate a State fair hearing.
4. Notice of Resolution Requirements:
- a. The PIHP/CMHSP must provide written notice of the resolution of the appeal and must also make reasonable efforts to provide oral notice in the case of an expedited resolution.
  - b. Enrollee notices of resolution must meet the requirements of 42 CFR 438.10(c)(1) that states "each PIHP entity must provide all required information in a manner and format that may be easily understood and is readily accessible by such enrollees and potential enrollees," and meets the needs of those with limited English proficiency and/or limited reading proficiency.
  - c. The content of the notice of resolution must include the results of the appeal process and the date it was completed
  - d. When the appeal is not resolved wholly in favor of the enrollee, the notice of resolution must also include:
    - i. The enrollee's right to request a Medicaid State Fair Hearing and how to do so;
    - ii. The enrollees' right to request to receive benefits while the State Fair Hearing is pending, and how to make that request; and
    - iii. That the enrollee may, consistent with state policy, be held liable for the cost of those benefits if the hearing decision upholds the PIHP's Adverse Benefit Determination

#### F. State Fair Hearing Process

- 1. SWMBH and its participant CMHSPs/provider shall comply with federal regulations providing a Medicaid enrollee the right to an impartial review by a state-level Administrative Law Judge (a State Fair Hearing), of an action of a local agency or its agent, in certain circumstances:
  - a. After receiving notice that the PIHP/CMHSP is upholding an Adverse Benefit Determination after Appeal.



- b. When the PIHP fails to adhere to the notice and timing requirements for resolution of Appeals as described in 42 CFR 438.408.
2. The State may offer or arrange for an external medical review in connection with the State Fair Hearing, if the following conditions are met:
  - a. The review must be at the enrollee's option and must not be required before or used as a deterrent to proceed to the State Fair Hearing.
  - b. The review must be independent of both the State and the PIHP.
  - c. The review must be offered without any cost to the enrollee.
  - d. The review must not extend any of the timeframes specified above and must not disrupt the continuation of benefits.
3. SWMBH and its participant CMHSPs/provider shall not limit or interfere with an enrollee's freedom to make a request for a State Fair Hearing.
4. Enrollees are given no more than 120 calendar days from the date of the applicable notice of resolution to file a request for a State Fair Hearing.
5. The PIHP is required to continue benefits, if the conditions described in Section G: Continuation of Medicaid Services are satisfied, and for the durations described therein.
6. If the Medicaid enrollee's services were reduced, terminated or suspended without advance notice, the PIHP/CMHSP must reinstate services to the level before the Adverse Benefit Determination.
7. The parties to the State Fair Hearing include the PIHP/CMHSP, the enrollee and his or her representative, or the representative of a deceased enrollee's estate.
8. A Recipient Rights Officer shall not be appointed as Hearings Officer due to the inherent conflict of roles and responsibilities.
9. Expedited hearings are available.
10. Detailed information and instructions for the Fair Hearing process can be found on the MDHHS website at:

[http://www.michigan.gov/mdhhs/0,5885,7-339-71547\\_4860-16825--,00.html](http://www.michigan.gov/mdhhs/0,5885,7-339-71547_4860-16825--,00.html)

OR

Department of Licensing and Regulatory Affairs  
Michigan Office of Administrative Hearings and Rules  
State Fair Hearing

[http://www.michigan.gov/lara/0,4601,7-154-10576\\_61718\\_77732---,00.html](http://www.michigan.gov/lara/0,4601,7-154-10576_61718_77732---,00.html)

11. Southwest Michigan Behavioral Health (SWMBH) and its participant CMHSPs/provider will coordinate and/or conduct the Fair Hearings for Medicaid enrollees of the PIHP/CMHSP.

#### G. Continuation of Medicaid Services

1. SWMBH/CMHSPs must continue the enrollee's benefits if all the following occur:
  - a. The enrollee files the request for an appeal timely within 60 calendar days from the date of the Adverse Benefit Determination; and
  - b. The enrollee files for continuation of benefits timely (on or before the latter of within ten (10) calendar days of the PIHP sending the notice of Adverse Benefit Determination; or the intended effective date of the proposed Adverse Benefit Determination); and



- c. The appeal involves the termination, suspension, or reduction, of previously authorized services; and
  - d. The services were ordered by an authorized provider; and
  - e. The period covered by the original authorization has not expired.
  - f. If the enrollee's services were reduced, terminated, or suspended without an advance notice, the PIHP must reinstate services to the level before the action.
2. If services are continued or reinstated while the appeal or State Fair Hearing is pending, they must continue until one of the following occurs:
    - a. The enrollee withdraws the appeal or request for State Fair Hearing; or
    - b. The Enrollee fails to request a State Fair Hearing and continuation of benefits within 10 calendar days after PIHP/CMHSP sends the enrollee notice of an adverse resolution to the Enrollee's Appeal; or
    - c. A State Fair Hearing office issues a hearing decision adverse to the Enrollee.
    - d. The authorization expires or authorization service limits are met.

#### H. Payment of Continued or Reinstated Medicaid Services

1. If PIHP/CMHSP or State Fair Hearing Administrative Law Judge reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, SWMBH/CMHSPs, or the State must pay for those services in accordance with State Policy and regulations.
2. If the PIHP, or the State Fair Hearing Administrative Law Judge reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the PIHP must authorize or provide the disputed services promptly, and as expeditiously as the Enrollee's health condition requires, but no later than 72 hours from the date it receives notice reversing the determination.
3. If the final resolution of the Appeal or State Fair Hearing upholds the Adverse Benefit Determination, the PIHP may, consistent with the state's usual policy on recoveries and as specified in the PIHP's contract, recover the cost of services furnished to the Enrollee while the Appeal and State Fair Hearing was pending, to the extent that they were furnished solely because of these requirements.

#### I. Appointment of an Authorized Representative

1. An enrollee may appoint any individual (such as a relative, friend, advocate, an attorney, or any physician) to act as his or her representative when pursuing appeals or Fair Hearings.
2. With the written consent from the enrollee, the enrollee has the right to have a provider or other authorized representative, acting on the enrollee's behalf, file an Appeal to the PIHP/CMHSP, or request a State Fair Hearing.
3. In the event the enrollee appoints a representative, the appeal request must include:
  - a. A statement that the enrollee is authorizing the representative to act on his or her behalf, and a statement authorizing disclosure of individually identifying information to the representative;
  - b. The enrollee's signature and date of making the appointment; and
  - c. A signature and date of the individual being appointed as representative, accompanied by a statement that the individual accepts the appointment.



4. Punitive action may not be taken by the PIHP against a provider who acts on the customer's behalf with the customer's written consent to do so or who supports the customer's appeal.
5. A provider may not charge a customer for representation in filing an appeal.
6. If an appeal is submitted by a third party but does not include a signed document authorizing the third party to act as an authorized representative for the enrollee, the 30-day time frame begins on the date an authorized representative document is received by the PIHP/CMHSP. The PIHP/CMHSP must notify the enrollee that an authorized representative form or document is required and that the request will not be considered until the appropriate documentation is received. "Third party" is defined as including, but not being limited to: health care Providers.
7. When a request for an appeal is filed by a person claiming to be a representative, but the representative does not provide appropriate documentation upon SWMBH's/CMHSP's request, SWMBH/CMHSP must document its reasonable efforts to secure the necessary documentation. SWMBH/CMHSP will not undertake a review until or unless such documentation is obtained.
8. For expedited requests, SWMBH/CMHSP will ensure that expedited requests are not inappropriately delayed due to missing documentation for appointment of a representative.

#### J. Record Keeping Requirements

1. SWMBH and its participant CMHSPs/provider are required to maintain records of enrollee appeals for review by State staff as part of the State quality strategy and the PIHP/CMHSP Memorandum of Understanding regarding service expectations and responsibilities. A PIHP/CMHSP record of each Appeal must contain, at a minimum:
  - a. A general description of the reason for the Appeal or Second Opinion;
  - b. The date received;
  - c. The date of each review, or if applicable, the review meeting;
  - d. The resolution at each level of the Appeal, if applicable;
  - e. The date of the resolution for each Appeal;
  - f. Name of the covered person for whom the Appeal was filed.
2. PIHPs must maintain such records accurately and in a manner accessible to the State and available upon request to CMS.
3. Appeal records must be retained for 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.
4. The SWMBH QAPI Department and Quality Management Committee will review data related to access to services, complaints, and satisfaction with special attention paid to both the customer and client (State of Michigan) perceptions of these topics. In all other documentation (SWMBH QAPI Plan) access, complaints, and satisfaction will refer to both customer and client assessment when available.
  - a. The SWMBH QMC will review Appeal member data at least annually, but usually quarterly to identify trends, or areas of improvement.

#### K. Reporting Requirements

1. Each PIHP/CMHSP provider entity shall adhere to applicable Appeals and Second Opinion requirements of this policy.
2. The CMHSP shall



- a. Maintain logs of all denials of services for Medicaid enrollees and report them to the PIHP according to the PIHP/CMHSP Memorandum of Understanding.
  - b. Maintain logs of all appeals for Medicaid enrollees and report them to the PIHP according to the PIHP/CMHSP Memorandum of Understanding.
  - c. Document all Medicaid enrollee requests for Second Opinions in the identified tracking system.
3. The PIHP shall:
- a. Monitor, track, and trend all denials, State Fair Hearing, Appeal, and Second Opinion requests and dispositions.

#### L. Second Opinions

1. Medicaid and Non-Medicaid enrollees have rights to a Second Opinion review under the authority of the State of Michigan Mental Health Code and the Medicaid Managed Care Regulations. The Second Opinion review process may be requested for denial of inpatient hospitalization and for denial of initial PIHP/CMHSP services under sections 409 and 705 of the Michigan Mental Health Code. The process of notification of rights to a Second Opinion is delegated to each CMHSP.
2. For each denial of inpatient care or eligibility for PIHP/CMHSP service, at the time of the denial, the PIHP/CMHSP is required to provide the enrollee with written notice of the rights to a Second Opinion Process. The notice shall contain all information as identified in this policy. The Notice must indicate that the enrollee is entitled to request a Second Opinion and the process for doing so.
  - a. For the denial of inpatient care under Section 409 of the Michigan Mental Health Code, the individual may request a second opinion from the executive director. The executive director shall arrange for an additional evaluation by a psychiatrist, other physician, or licensed psychologist to be performed within 3 days, excluding Sundays and legal holidays, after the executive director receives the request. If the conclusion of the second opinion is different from the conclusion of the preadmission screening unit, the executive director, in conjunction with the medical director, shall make a decision based on all clinical information available. The executive director's decision shall be confirmed in writing to the individual who requested the second opinion, and the confirming document shall include the signatures of the executive director and medical director or verification that the decision was made in conjunction with the medical director. If an individual is assessed and found not to be clinically suitable for hospitalization, the preadmission screening unit shall provide appropriate referral services.
  - b. For the denial of eligibility for PIHP/CMHSP under Section 705 of the Michigan Mental Health Code, if an applicant for community mental health services has been denied mental health services, the applicant, his or her guardian if one has been appointed, or the applicant's parent or parents if the applicant is a minor may request a second opinion of the executive director. The executive director shall secure the second opinion from a physician, licensed psychologist, registered professional nurse, or master's level social worker, or master's level psychologist. The process should follow



standard or expedited timeframes, as outlined in this policy for appeals, as the circumstances warrant.

3. Under section 438.206 (b) of the Medicaid Managed Care Regulations, Second Opinions are made available at no cost to enrollees, from a qualified health professional within the network or outside the network if a qualified health professional is not available within the network.

a. This may be applied, but not limited to disputes regarding diagnoses, medications, and treatment modalities (such as therapeutic techniques).

b. Second Opinions under 438.206 (b) may be requested at any time.

M. Second Opinion requests will be coordinated and documented by the customer service department of the PIHP/CMSHP.

1. SWMBH/CMHSPs will cooperate with the Michigan Department of Insurance and Financial Services (DIFS) in the implementation of the "Patient's Rights to Independent Review Act" (MCL 550.1901-1929).

**References:**

A. MDHHS/PIHP Contract: General Requirements, (B) Customer Service Standards and (L) Grievance and Appeals Process for Beneficiaries

B. [MDHHS Appeal and Grievance Resolution Processes Technical Requirement](#)

C. Michigan Mental Health Code: 330.1206a, 330.1409, 330.1705

D. Medicaid Managed Care Regulations: 42 CFR 431.200, 42 CFR 438.10, 42 CFR 438.228, 42 CFR 438.400-410, 42 CFR 438.416-424

E. MDHHS PIHP Customer Service Standards

F. MDHHS Numbered Letter 22-72, L 22-72 Memo

**Attachments:**

A. MDHHS PIHP Customer Service Standards

B. MDHHS Numbered Letter 22-72, L 22-72 Memo

C. MDHHS Appeal & Grievance Resolution Process TR

**Attachments: None**



### Revision History

Revision #	Revision Date	Revision Location	Revision Summary	Revisor
1	1/1/15	SWMBH		
2	4/24/15	SWMBH		
3	1/16/17	SWMBH		
4	3/26/18	SWMBH		
5	10/1/18	SWMBH		
6	4/1/19	Definitions, References Standards and Guidelines: C2, D1/2c, E1, F3/12/13, G1d/2/4b/4c, H1c/2fi/2i/2j	Updated per Managed Care Regulations and MDHHS Contract FY19	Heather Woods
7	4/1/20	References, Standards/ Guidelines: A, C, E1e-f; H3a-d; H4b-d; I1d; I2c-j; M2b	Managed Care Regulations and MDHHS/PIHP Contract FY20	Heather Woods
8	6/25/21	References, Standards and Guidelines: C2a, C3, D2a/d/g/j/k, D4e-g/l, D5e-f, E1c, E2c-d, H1a/b/d, H2e, J4/6, K1e, K2-3	Updated contract references. Updated language per contract clarifications.	Heather Woods
9	8/17/21	Standards and Guidelines: D2j(i), H1b, N	Adding language from amendments to Contract MA 200000002103.	Heather Woods
10	12/1/22	Standards and Guidelines: E-H. J. K2-3.	Renaming policy to "Customer Appeal System" and update effective date of policy. Removing Grievance information now covered in separate policy. Reordering policy sections. Adding timeframe for appeal acknowledgment. Removing language requiring follow up in writing for oral appeals. Updating effective date of	Heather Woods



			policy due to significant changes (split of Grievance/Appeal information).	
11	9/1/23	Policy, Definitions, Standards and Guidelines: L3	Adding information regarding 2 <sup>nd</sup> Opinions per CFR guidance from MDHHS.	H. Woods
12	12/7/23	Definitions; Standards and Guidelines C	Updating per MDHHS Memorandum and G&A Technical Requirement: L 22-72-BH	H. Woods
13	8/1/24	Policy; Standards and Guidelines A-H	Updating per G&A Technical Requirement, 4.30.24 edition.	H. Woods
14	10/1/24	Definitions; Standards and Guidelines: D3-5, E, G1-2, and I7.	Annual Review	H. Woods






# 06.04 Customer Appeal System

Final Audit Report

2024-11-12

Created:	2024-11-12
By:	Paige Pfaff (paige.pfaff@swmbh.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAA0t9Jclib8klcDKiNE6lSy6yBzvirmLn

## "06.04 Customer Appeal System" History

-  Document created by Paige Pfaff (paige.pfaff@swmbh.org)  
2024-11-12 - 2:54:28 PM GMT- IP address: 104.159.231.26
-  Document emailed to Sarah Ameter (sarah.ameter@swmbh.org) for signature  
2024-11-12 - 2:54:53 PM GMT
-  Email viewed by Sarah Ameter (sarah.ameter@swmbh.org)  
2024-11-12 - 3:29:14 PM GMT- IP address: 104.47.56.126
-  Document e-signed by Sarah Ameter (sarah.ameter@swmbh.org)  
Signature Date: 2024-11-12 - 3:29:23 PM GMT - Time Source: server- IP address: 104.159.231.26
-  Agreement completed.  
2024-11-12 - 3:29:23 PM GMT