Appendix XXIV, MDCP Medical Necessity Denial Attachment - Member

You or your child is not eligible for the Medically Dependent Children Program (MDCP). The Texas Medicaid and Healthcare Partnership (TMHP) has found that you or your child does not meet the medical necessity requirement for MDCP. The attached Form H2065-D, Notification of Managed Care Program Services, lists the reasons for termination. You can also see the MDCP eligibility rules on pages 4-5 of this notice.

You can appeal this decision.

If you want to appeal the MDCP termination, you must ask for a state fair hearing. To ask for a fair hearing, you can use the two-page request form on pages 6-7 of this notice or call the office phone number on the top-right corner of the attached Form H2065-D.

- You may be able to continue getting MDCP services during the fair hearing process. If you want services to continue during the fair hearing process, you must request a fair hearing within **10 business days** from the date of notice on the top-right corner of Form H2065-D or by the date your services will end (also on Form H2065-D), whichever is later. If you use the request form on pages 6-7 of this notice, make sure you check the box to continue services. If you call, tell us over the phone that you want services to continue.
- You have **90 days** from the date on Form H2065-D to ask for a fair hearing.

A fair hearing is when a hearing officer, who is not part of the Medicaid program, reviews the decision to terminate eligibility for services. If you ask for a fair hearing, it will be scheduled within **30 days**. A packet of information will be mailed to you before the fair hearing.

- You can submit new facts about your case. You have the right to see any records and information that will be used.
- Fair hearings can last 30 minutes to four hours, depending on the issue. Most fair hearings are held by phone, but if you have good reason, you can ask for an in-person fair hearing.

- You can represent yourself or pick a relative, friend, lawyer or someone else to represent you during the fair hearing. You will have to pay any fees they charge to represent you. To find out if there is free legal help in your area, call 2-1-1 (or 877-541-7905) and press 1 after picking a language. You must enter your zip code and ask for the legal aid office in your county.
- You will get a written decision within **60 days** of the date you requested a fair hearing. The decision will explain your right to have the case reviewed if you disagree with the outcome.

If you have questions about the fair hearing process, call an HHS ombudsman at 866-566-8989 or submit questions online at Ombudsman Managed Care Help (hhs.texas.gov/managed-care-help).

You have interest list options.

You can choose one or all of the following options:

- Move back to the top of the MDCP interest list to get a new assessment for MDCP. This is also called the **first position option**.
- Move up on another 1915(c) Medicaid waiver program interest list, be added to the bottom of another 1915(c) Medicaid waiver program interest list, or both. This is also called the **advanced placement option.**

MDCP First Position

1. You must be under 21 years old.
2. You will be placed at the top of the MDCP interest list.
3. You will get a new assessment when an MDCP slot becomes available.
   A. You can be reassessed by the same managed care organization (MCO) or select a new MCO.
   B. You may request a different person complete the new assessment if you remain with the same MCO.
4. You can only ask for the first position option one time.
5. You can ask for a fair hearing and the first position option at the same time, but the fair hearing will happen first.
   A. You may be able to keep getting MDCP services during the fair hearing process.
   B. **If you choose the first position option without requesting a fair hearing, your MDCP services will end.**
   C. If you choose the first position option without having a fair hearing first, you must decline the fair hearing and request first position in writing. <u>You cannot call to do this</u>. You can use the form on pages 6-7 or write a letter.
6. You have **120 days** from the date on the top-right corner of Form H2065-D to request first position.

Advanced Placement

1. You can request to move up on or be added to the bottom of another interest list for these 1915(c) Medicaid waiver programs:
   A. Community Living Assistance and Support Services (CLASS)
   B. Home and Community-based Services (HCS)
   C. Texas Home Living (TxHmL)
   D. Deaf Blind with Multiple Disabilities (DBMD)
2. To move up on a list, you must have already been on it before or be on it now. If you want to be added to another 1915(c) Medicaid waiver program interest list, we will add you to the bottom.
3. If you ask to move up, we will change the request date for that program to your MDCP request date, if it is earlier.
4. You can ask for these options, the first position option and a fair hearing all at the same time.
5. You have **120 days** from the date on the top-right corner of Form H2065-D to request to move up on another 1915(c) Medicaid waiver program interest list.

You can request the interest list options now or you can wait until after the fair hearing. You can also do all at the same time. Use the two-page form on pages 6-7 of this notice or call the number on the top-right corner of Form H2065-D to request an interest list option. If you have questions, call the phone number on the top-right corner of Form H2065-D.

You may also request to add your name to the bottom of a new interest list at any time. For questions about interest list placement or information about other 1915(c) Medicaid waiver programs, you may contact the Interest List Management (ILM) unit at 877-438-5658.

You may apply for the Medicaid Buy-In for Children program.

You might be able to get the Medicaid Buy-In for Children (MBIC) program. MBIC offers low-cost Medicaid services to children with disabilities in families that make too much money to get Medicaid.

MBIC covers the same services as Medicaid, including long-term services and supports like nursing home care and personal care.

If you can get MBIC, you might have to make a monthly payment depending on your income and whether you have health insurance through your job.

Call or visit an HHSC benefits office. To find an office near you, call 2-1-1 (or 877-541-7905). 2-1-1 can also answer questions about the MBIC program. Select option 2.

You or your child was terminated from MDCP because of the following eligibility rules.

To be eligible for MDCP, you must meet the medical necessity criteria for a nursing facility level of care. This means you must:

- Have a medical condition serious enough that your needs exceed the routine care an untrained person can provide.
- Require licensed nurse supervision, assessment, planning and intervention only available in an institution.

Medical or nursing services must be:

- Ordered by a doctor.
- Needed because of documented medical conditions.
- Provided by a registered or licensed vocational nurse.

- Provided directly or under the supervision of a licensed nurse in an institutional setting.
- Required on a regular basis.

You can find the MDCP eligibility criteria in the Texas Administrative Code at Title 1, Section 353.1155 and Title 26, Section 554.2401. It is available online at The Texas Administrative Code (sos.state.tx.us/tac/index.shtml).

If you have questions about this notice, call HHSC at the phone number on the top-right corner of Form H2065-D.

You have rights.

If you believe you have been discriminated against because of race, color, national origin, age, sex, disability, political beliefs, or religion, you may file a complaint using the office address on the top-right corner of Form H2065-D or by writing to:

Civil Rights Office
Health and Human Services
P.O. Box 13247, Mail Code 1560
Austin, TX 78711

Fair Hearing and Interest List Request Form for MDCP Terminations

You can fill out the following two-page form or call the phone number on the top-right corner of Form H2065-D to ask for a fair hearing, first-position option, advanced placement or all of these options.

More information on these options, including important timelines, can be found in the attached notice. If you use this form, use the enclosed pre-addressed postage-paid envelope to mail back this form.

Member Information *

Last Name:	First Name:
Parent or Guardian Last Name:	Parent or Guardian First Name:
Medicaid ID:	Phone Number:
Address:	

Legally Authorized Representative (LAR) Information *

Last Name:	First Name:
Phone Number:	
Address:	

Request a Fair Hearing.

☐ I want a Fair Hearing.

☐ I want my MDCP services to continue during the fair hearing process.

Signature – Member, Parent, Guardian or LAR: _____

Date: _____

Request First Position

☐ I want to be placed at the top of the MDCP interest list to get a new assessment when a slot becomes available.

I understand that if I choose this option and a fair hearing, the fair hearing will happen first. I understand that if I don't ask for a fair hearing, my current MDCP services will end.

I understand that I will only receive first position and be assessed again for MDCP if I am under 21 years old.

Signature – Member, Parent, Guardian or LAR: _____

Date: _____

Request Advanced Placement

☐ I want to **move up** on the following 1915(c) Medicaid waiver program interest list(s):

Class	HCS	TxHmL	DBMD

☐ I want to **be added to the bottom** of the following 1915(c) Medicaid waiver program interest list(s):

Class	HCS	TxHmL	DBMD

Signature – Member, Parent, Guardian or LAR: _____

Date: _____

***You must fill in these boxes.**

26 Tex. Admin. Code 554.2401 General Qualifications for Medical Necessity Determinations

Medical necessity is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for a medical necessity determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section.

1. The individual must demonstrate a medical condition that:
    A. is of sufficient seriousness that the individual's needs exceed the routine care which may be given by an untrained person; and
    B. requires licensed nurses' supervision, assessment, planning, and intervention that are available only in an institution.
2. The individual must require medical or nursing services that:
    A. are ordered by a physician;
    B. are dependent upon the individual's documented medical conditions;
    C. require the skills of a registered or licensed vocational nurse;
    D. are provided either directly by or under the supervision of a licensed nurse in an institutional setting; and
    E. are required on a regular basis.

Source Note: The provisions of this Section 554.2401 adopted to be effective Sept. 1, 2008, 33 TexReg 7264; transferred effective Jan. 15, 2021, as published in the Texas Register Dec. 11, 2020, 45 TexReg 8871