

### INTRODUCTION

Home and Community Based Service (HCBS) participants and applicants are required to receive written notice from the Division of Senior and Disability (DSDS) staff when an action adversely affects certain HCBS referrals or currently authorized services. HCBS participants and applicants have the right to appeal an adverse action.

DSDS staff shall send an [Adverse Action Notice](#) to provide notice when an action:

- Denies initial request for HCBS
- Denies care plan change request
- Reduces current authorization of HCBS
- Closure of partial/complete HCBS

A reduction, denial or closure of HCBS is not considered an adverse action when a HCBS participant or applicant is in agreement. DSDS staff shall thoroughly document agreements in the electronic case record.

### PURPOSE

The purpose of this policy is to:

- Provide guidance to DSDS staff on how to process adverse actions
- Provide guidance on different adverse action situations
- Provide timeframes for sending adverse actions
- Provide timeframes for how long a HCBS participant or applicant can appeal

### PROCESS

Within three (3) business days of an identified need for an adverse action, DSDS staff shall mail an [Adverse Action Notice](#) explaining all the services affected and reason(s) for the adverse action, including the [Legal References for the Adverse Action](#) to be taken.

Anyone may make the initial request for a hearing on the participant's behalf. However, the participant and/or their legal guardian must be contacted directly to confirm the request. If DSDS staff cannot reach the participant and/or legal guardian by the third attempt ([Appeal and Hearing Process](#)), the hearing request shall not be processed and the adverse action will proceed as appropriate.

When the participant contacts DSDS staff verbally or in writing to request a hearing, DSDS staff shall complete the [Application for State Hearing Form](#) with information provided by the participant ([Appeal and Hearing Process](#)).

- If the participant requests paperwork be sent to an authorized representative for the hearing process, the participant and/or their legal representative must complete and return an [Authorization for Disclosure of Consumer Medical/Health Information Form](#).

All forms and documents related to the adverse action process shall be uploaded to the participant's electronic case record.

Pursuant to the Code of Federal Regulations (CFR), specifically [42 CFR 431.211](#) regarding advance notice of an adverse action, unless otherwise specified, any adverse action that results in a change to the case status or changes to a prior authorization shall require a ten (10) business day notification prior to the date of the change or closing.

- The ten (10) business day period begins the day after mailing the [Adverse Action Notice](#) and ends the morning of the eleventh (11) business day

When a participant contacts DSDS staff in response to an Adverse Action or [Waiting List Notice for Independent Living Waiver \(ILW\) Services](#), DSDS staff may need to make adjustments to the participant's proposed care plan based on new information provided.

- A new Adverse Action may be required in situations including, but not limited to:
  - When the proposed amount of current HCBS is increased, but not to the level requested by the participant
  - If additional HCBS are denied
  - If the proposed care plan is further decreased

In these cases, DSDS staff shall mail a [Reversal of Adverse Action Form](#) for the original action.

The participant has ninety (90) business days from the date the Adverse Action Notice is mailed to appeal the decision.

However, the participant must appeal within ten (10) business days of the date the Adverse Action Notice was mailed in order to continue receiving current services.

**NOTE:** If the appeal is ruled in favor of DSDS, the participant and/or the participant's estate may be liable for the cost of HCBS delivered during the appeal process. DSDS staff shall notify the participant of possible liability.

The participant's decision to continue or discontinue HCBS shall be communicated to the provider and thoroughly documented in case notes in the participant's electronic case record.

#### **INELIGIBLE DUE TO MO HEALTHNET BENEFITS**

Adverse action as a result of ineligibility for Medicaid benefits is subject to appeal initiated through the Department of Social Services (DSS), Family Support Division (FSD). This includes participants who become enrolled in a Medicaid managed care plan.

- In such cases, the participant shall be notified by completing the [Notice of Closure for HCBS Form](#).
- The Notice of Closure for HCBS Form shall be mailed within one (1) business day of receipt of information of ineligibility.
- This action does not require a ten (10) business day waiting period.

**ASSESSMENT LEVEL OF CARE INELIGIBILITY**

An [Adverse Action Notice](#) shall be sent when a potential or current participant does not meet the minimum required LOC score for the provision of HCBS.

**NOTE:** An Adverse Action shall be mailed, even if the individual is in agreement with the LOC ineligibility determination.

**EXCEPTIONS TO THE TEN DAY NOTIFICATION**

DSDS staff shall mail the Adverse Action Notice to the last known address in the following situations, without having to wait ten (10) business days before processing the action, when:

- The participant does not meet Level of Care (LOC) during an initial assessment
- The participant is admitted to an institution where HCBS may not be continued
- The participant has moved to another state and is no longer eligible to receive Medicaid benefits in Missouri
- The whereabouts of the participant is unknown (e.g., mail **returned** by Post Office indicates no known forwarding address)

**NOTE:** An Adverse Action Notice does not need to be mailed to the last known address if factual notification of the participant's death is received.

**ILW WAITING LIST**

Participants placed on the [Independent Living Waiver \(ILW\) Waiting List](#) have the right to appeal their placement on the list.

- These participants shall be notified by sending the [Waiting List Notice for ILW Services](#). This action does not require a ten (10) business day waiting period
- The participant has ninety (90) business days from the date the Waiting List Notice for ILW Services is mailed to appeal

**PARTICIPANT DEMONSTRATING THREATENING OR ABUSIVE BEHAVIOR**

When a participant, or a member of the participant's household, demonstrates threatening and/or abusive behavior towards a provider or other DSDS staff, the provider may request to discontinue services. DSDS staff and supervisors shall consult with DSDS Management for approval to proceed with the adverse action. The case record shall be reviewed to ensure documentation supports the action taken to discontinue the service authorization, and the participant's failure to comply with Participant Rights and Responsibilities.

**PARTICIPANTS NOT REQUESTING A HEARING**

All affected HCBS shall be reduced or closed as appropriate. DSDS staff shall complete necessary actions for the reduction or discontinuation.

- DSDS staff shall notify the HCBS provider of the action taken
- DSDS staff shall document actions taken in the participant's electronic case record
- No further action is necessary for participants placed on the ILW Waiting List

**STATE DESIGNEE**

The selection of State Designee shall be used when there is no HCBS provider available. The Prior Authorization shall only remain in State Designee status for ninety (90) days. State Designee is not to be selected if the participant and/or legal guardian fail to select an HCBS provider.

- If an HCBS provider does not become available within ninety (90) days, DSDS staff shall initiate an adverse action.
- The justification of “No Provider Selected or Available” shall be used.
- If there is no response from the participant and/or legal guardian within ten (10) business days of the date of the adverse action, DSDS staff shall end date the State Designee Prior Authorization and close the case.
- If within ninety (90) business days of mailing the adverse action DSDS staff is notified by the participant and/or legal guardian an HCBS provider has been selected, DSDS staff shall reopen the case and authorize HCBS.

**NOTE:** The case shall be reopened and HCBS authorized *only* if an assessment has been completed within ninety (90) business days of the adverse action being sent. An assessment is required if one has not been completed within the 90 business days of the adverse action being sent.