

BSW 412 Eligibility for Services: Adverse Action

April 22, 2021

PURPOSE

An adverse action is any action to terminate, decrease, or deny Big Sky Waiver services. Timely notice must be provided for all adverse actions to ensure members have the opportunity to provide information about their continued need for services.

Big Sky Waiver case management teams notify members for all adverse actions except for adverse actions based on Level of Care criteria. Mountain Pacific Quality Health issues letters of adverse action resulting from Level of Care criteria.

Special attention should be devoted to implementing any adverse action. Case management teams and members should prepare for the effects of the adverse action, with case managers providing support to members before and after transitions resulting from the adverse action, as appropriate.

DEFINITIONS

- **Timely Notice:** Written notification mailed at least ~~45~~³⁰ calendar days prior to the date of action.
- **Termination:** Discontinuation of coverage under the Big Sky Waiver program.

TIMELY NOTICE OF ADVERSE ACTION SITUATIONS

The case management team must send timely notice when Big Sky Waiver services are terminated, denied, or decreased for any of the following reasons:

1. A determination by the case management team or Community Services Bureau that the services, as provided for in the service plan, are no longer appropriate or effective in relation to the member's needs.
2. The failure of the member to use the services as provided for in the service plan.
3. The behaviors of the member create serious risk to the member, caregivers or others or substantially impede the delivery of services as provided for in the service plan.
4. The health of the member is deteriorating or in some other manner placing the member at serious risk of harm.
5. A determination by the case management team that the service providers necessary to the delivery of services as provided for in the service plan are unavailable.
6. Insufficient Big Sky Waiver funds.
7. Member refuses to sign the Service Plan.
8. Member has moved out of state.
9. The member is admitted to a nursing facility, hospital, or transitional care unit for more than ~~30-60~~³⁰⁻⁶⁰ days. If a member is absent from services less than ~~30-60~~³⁰⁻⁶⁰ calendar days, refer to BSW 415 (Temporary Absence).

EXCEPTIONS TO TIMELY NOTICE

- ~~1. The Department does not need to provide timely notice when the member provides a written request to end program coverage or service(s) by a date prior to the end of the 45-day period. A member transitions to another Medicaid program (e.g., Member transitions from Big Sky Waiver to Severe and Disabling Mental Illness Waiver).~~
- ~~2. A member provides a written request to end program coverage or service(s).~~

EXCEPTIONS TO TIMELY NOTICE

Exceptions to timely notice include when:

Commented [LR1]: SB33 requires at least 30 days of prior notice before terminating the person's participation in the waiver. The bill provides no exceptions to this requirement.

ADVERSE ACTION NOTICE- ADVERSE ACTION LETTER 1 CONTENT REQUIREMENT

Adverse action notices inform the member of the:

- ~~1. Proposed adverse aAction to be taken.~~
- ~~2. Reason for the action.~~
- ~~3. Specific agency policy and state and federal regulations supporting the adverse action.~~
- ~~4. Date the proposed adverse action will occur.~~
- ~~5. Member's right to provide information demonstrating any continued need for the services.~~
- ~~6. Member's right to request a-n administrative reviewhearing.~~
- ~~5.~~

MEMBER RESPONSE

Members can respond to the timely notice to provide information to the Department about their continued need for services. Information must be provided to the Department within 30 days of the date the notification was mailed. This 30-day period is the administrative review period.

ADMINISTRATIVE REVIEW APPROVAL

If the member successfully demonstrates their need for continued services, the Department will rescind the notice of adverse action.

ADMINISTRATIVE REVIEW DENIAL, ADVERSE ACTION LETTER 2

The Department may move forward with the adverse action at the end of the 30-day administrative review period if the member has not replied to the adverse action notice or, after reviewing the information provided by the member, the Department determines the adverse action remains the appropriate response. The Department will send a second notice informing the member of the decision

to terminate, deny, or decrease services. The adverse action will be implemented at the 45-day mark (45 days from the mail date of the timely notice (first notice of adverse action)).

ADVERSE ACTION LETTER 2 CONTENT REQUIREMENT

1. Adverse action to be taken.
2. Reason for the action.
3. Specific agency policy and state and federal regulations supporting the adverse action.
4. Date the adverse action will occur.
5. Member's right to request a fair hearing to appeal the decision.
6. Member's right to request continued services during the appeal period.
7. The Department will not seek reimbursement of services provided during the appeal period unless the Department finds evidence of fraud or similar circumstances indicating waiver services were not warranted.

APPEAL PERIOD

Members can file an appeal within 90 days of the mailing date of the second notice of adverse action. A member may request continued service during the appeal period. When a member makes this request, the Department will re-instate services while awaiting the outcome of the fair hearing. The member could experience a gap in services between the adverse action implementation at the 45-day mark and the receipt of the written appeal and continued services request.

FAIR HEARING REQUEST

A person aggrieved by any adverse action made by the Department, may request a fair hearing (<https://dphhs.mt.gov/Portals/85/hcsd/documents/mamannual/CMA1505-1July012016.pdf>)(refer to Big Sky Waiver 413).