

<b>DRAFT FOR PUBLIC COMMENT</b>  <b>Michigan Department of Health and Human Services</b>		
	<b>Project Number:</b> 2527-BH	<b>Date:</b> June 16, 2025

**Comments Due:** July 21, 2025  
**Proposed Effective Date:** October 1, 2025  
**Direct Comments To:** Dana Moore  
**E-Mail Address:** [MooreD61@michigan.gov](mailto:MooreD61@michigan.gov)  
**Phone:**

**Fax:**

**Policy Subject:** Derek Waskul, et al. v. Washtenaw County Community Mental Health, et al. Settlement Agreement

**Affected Programs:** Medicaid, Habilitation Supports Waiver (HSW)

**Distribution:** All Providers

**Summary:** This bulletin is being issued for settlement-related action items identified in Derek Waskul, et al. v. Washtenaw Community Mental Health, et al. to update policy in the Behavioral Health and Intellectual and Developmental Disability Supports and Services chapter within the Michigan Department of Health and Human Services (MDHHS) Medicaid Provider Manual. The updates include adjustments or additions to language related to medical necessity, self-directed service arrangements, administrative law judge authority, community living supports, fiscal management services, and person-centered planning.

**Purpose:** To comply with the provisions of the Waskul settlement agreement and court order.

**Cost Implications:** Unknown

**Potential Hearings & Appeal Issues:** Expansion of appeal rights for self-determination (SD) community living supports (CLS) and/or SD overnight health and safety supports (OHSS).

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

**THIS SECTION COMPLETED BY RECEIVER**

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

<b>Signature:</b>	<b>Phone Number</b>
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**Signature Printed:**

<b>Bureau/Administration</b> <i>(please print)</i>	<b>Date</b>
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# Proposed Policy Draft

Michigan Department of Health and Human Services  
Health Services

**Distribution:** All Providers

**Issued:** August 29, 2025 (proposed)

**Subject:** Derek Waskul, et al. v. Washtenaw County Community Mental Health, et al. Settlement Agreement

**Effective:** October 1, 2025 (proposed)

**Programs Affected:** Medicaid, Habilitation Supports Waiver (HSW)

## I. Introduction

This bulletin is being issued for settlement-related action items identified in Derek Waskul, et al. v. Washtenaw Community Mental Health, et al. to update policy in the Behavioral Health and Intellectual and Developmental Disability Supports and Services chapter within the [Michigan Department of Health and Human Services \(MDHHS\) Medicaid Provider Manual](#), including changes specific to the HSW. The updates include:

- Clarification of medical necessity language.
- Specified determination criteria must be tailored to the beneficiary.
- Clarification that clinical information includes assessments and input from the beneficiary.
- Specified limitations on Prepaid Inpatient Health Plan (PIHP) decisions.
- Specified PIHP role in self-directed (SD) arrangements including requirements for budget reductions and managing denial process, including the role for PIHPs specific to HSW only.
- Definition of Administrative Law Judge (ALJ) authority in SD service arrangements and choice voucher budget hearings.
- Definition of ALJ authority in SD service arrangements terminations.
- Definition of Community Living Supports (CLS) inclusions and exclusions including costs for HSW.
- Definition of Fiscal Management Services (FMS) in more detail.
- Definition of specific person-centered planning (PCP) requirements related to SD service arrangements.

## **II. Medical Necessity Criteria**

The following medical necessity criteria apply to Medicaid mental health, developmental disabilities, and substance abuse supports and services and must be specific to the beneficiary.

### **A. Determination Criteria**

Determination criteria is updated to include the following:

The determination of a medically necessary support, service or treatment must be:

- Tailored to the beneficiary's unique goals and objectives, as documented in the individual plan of service;
- Based on clinical information (e.g., assessments conducted with input from the beneficiary and their support system) from the beneficiary's primary care physician or health care professionals with relevant qualifications who have evaluated the beneficiary;
- For beneficiaries with mental illness or developmental disabilities, made in and as part of the PCP process; and
- For beneficiaries with substance use disorders, made during individualized treatment planning.

The following language was removed:

- For beneficiaries with mental illness or developmental disabilities, based on PCP, and for beneficiaries with substance use disorders, individualized treatment planning

### **B. PIHP Decisions**

PIHP decisions, specifically including utilization management, will not replace the PCP process. For example, utilization management review may not remove or change the beneficiary's goals. It may provide for less costly alternatives that accomplish the same goals.

Edits to the beneficiary's Individual Plan of Service (IPOS) require PCP process be reopened.

#### **i. PIHP Decisions for SD Service Arrangements/ Choice Voucher and Associated Budgets**

When the PIHP, or Community Mental Health Service Program (CMHSP) acting on the PIHP's behalf, denies or approves a limited authorization of a verbal or written request for inclusion of a service in the IPOS, or one or more specific aspects of the

amount, scope, and duration of a service, the PIHP, or CMHSP acting on the PIHP's behalf, must ensure that:

- the item is listed in a separate section of the IPOS titled "Requests Not Approved;" and
- the PIHP, or CMHSP acting on the PIHP's behalf, provides an adverse benefit determination that briefly but concretely sets forth its reasoning for not approving the request.

This applies regardless of whether the non-approval or limited approval takes place during the PCP process (e.g., before the planning meeting, after the planning meeting) or after its conclusion.

ii. PIHP Decisions for HSW SD Service Arrangements/Choice Voucher and Associated Budgets

The PIHP, or CMHSP acting on the PIHP's behalf, must provide written notice to HSW beneficiaries with SD service arrangements who are at risk of termination which shall specify, in such detail as is reasonably practicable, the issues that have led to the risk of termination, and shall provide opportunities for meaningful problem solving that involve the beneficiary.

Collaborative and meaningful problem solving should occur in a timely manner and should begin no longer than 30 days following the notification.

If there is no resolution from problem-solving activities, then the PIHP (or CMHSP acting on the PIHP's behalf) shall issue an Advance Action Notice, with appeal rights consistent with those provided in 42 CFR § 438.400 et.

Prior to when a PIHP, or CMHSP acting on the PIHP's behalf, reduces a beneficiary's SD budget at an annual renewal or otherwise, the PIHP, or CMHSP acting on the PIHP's behalf, must provide written justification to the beneficiary. The written justification must include specific justification for the reduction and why the PIHP, or CMHSP acting on the PIHP's behalf, determined the beneficiary does not need the same amount, duration, and scope of services that the beneficiary was previously assessed to need. A reduction in a SD budget must be in response to an identifiable change in the beneficiary's need.

For the avoidance of doubt:

- A budget reduction and terminations made during the term of an IPOS shall be treated as a "reduction, suspension, or termination" for purposes of internal appeal and Fair Hearing rules (including advance notice through an Adverse Benefit Determination notice and continuation of benefits, when applicable), and

- A budget reduction or termination made at annual renewal (e.g., during the PCP process between the time of pre-planning and when the plan is signed) must be treated as a denial of requested service AND the beneficiary must be notified in writing 14 calendar days before the PCP meeting for annual renewal.

### C. Administrative Law Judge (ALJ)

#### i. ALJ Authority in Termination of Self-Direction Service Arrangements and Choice Voucher Hearings

Beneficiaries in a SD service arrangement may challenge the termination of the SD service arrangement in a Medicaid Fair Hearing. The ALJ shall reverse, rather than remand, the PIHP/CMHSP's termination decision and direct the continuation of the SD if the proofs presented on the record do not establish good cause to terminate the SD service arrangement. In determining whether there was good cause to terminate the SD service arrangement, the ALJ may consider the following factors, as well as any other factor relevant to the particular case:

- **Health and Safety Implications:** Consider whether the termination is due to a significant health, safety, and/or legal issue that has and will continue to put the beneficiary's health and safety at risk.
- **Problem-Solving Opportunities:** Consider whether the required good faith efforts were made to meaningfully problem solve the issues leading to a decision to end the SD service arrangement.
- **Support Opportunities:** Consider if ongoing support and assistance was provided to the beneficiary to SD their services (e.g., staff management, active budget management, education, services and supports broker).
- **Training:** Consider if the beneficiary/employer of record was provided adequate training on SD service arrangements and supports available.
- **Written Notice:** Consider if the beneficiary/employer of record was provided with the obligatory written notice that the arrangement was at risk of

#### ii. ALJ Authority in HSW Self-Directed and Choice Voucher Budgets Hearings

HSW beneficiaries in SD arrangements may: (1) challenge the CLS and OHSS portions of the SD budget, and (2) challenge the number of units of CLS or OHSS authorized, including challenging the allocation of units allocated between CLS and OHSS. In either case, the ALJ shall do the following:

- If the ALJ concludes: (1) that the proofs presented on the record at the hearing establish that the PIHP/CMHSP's decision was inconsistent with medical necessity as set forth in the MDHHS Medicaid Provider Manual, and (2) that such proofs establish that the specific budget level or authorization requested by the Petitioner is (a) medically necessary, (b) otherwise

consistent with state and federal law and policy, and (c) necessary to implement the IPOS, the ALJ shall reverse the determination and direct entry of the specific budget level or number of authorized units of SD CLS or SD OHHS requested by the Petitioner.

- If the ALJ concludes: (1) that the proofs presented on the record at the hearing establish that the PIHP/CMHSP's decision was inconsistent with medical necessity as set forth in the Medicaid Provider Manual, but (2) that such proofs do not establish that the specific budget level or authorization requested by the Petitioner is (a) medically necessary, (b) otherwise consistent with state and federal law and policy, and (c) necessary to implement the IPOS, the ALJ shall reverse the determination and remand to the PIHP/CMHSP for reconsideration based on the ALJ's findings and order, specifying to the extent reasonably possible the parameters of such reconsideration.
- If the ALJ concludes that the proofs presented on the record at the hearing do not establish that the PIHP/CMHSP's decision was inconsistent with medical necessity as set forth in the MDHHS Medicaid Provider Manual or with state or federal law or policy, the ALJ shall uphold the determination.

### **III. Community Living Supports (CLS) (Habilitation Supports Waiver Only)**

Any support may be covered as CLS if it is described in the Community Living Supports section of the Behavioral Health and Intellectual and Developmental Disability Supports and Services chapter within the MDHHS Medicaid Provider Manual and is determined through the PCP process to "facilitate an individual's independence, productivity, and promote community inclusion and participation," for the particular beneficiary. Basic coverage criteria are defined in the Medical Necessity Criteria section of this policy.

CLS does not include:

- Costs associated with room and board
- Fiscal management services
- Purchase or rental of a vehicle
- In-home entertainment subscription

Payments for CLS may not be made, directly or indirectly, to responsible relatives (i.e., spouses or parents of minor children) or the legal guardian. However, payments to a non-guardian parent of an adult, or to a spouse of a legal guardian, are permitted so long as they are for work actually performed by that individual.

For beneficiaries living in unlicensed homes, CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living (ADL), and/or shopping may be used to complement Home Help services when the beneficiary's needs

for this assistance have been officially determined to exceed MDHHS allowable parameters. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help. CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, Medicaid State Plan coverage of Personal Care in Specialized Residential Settings.

Costs that may be covered for CLS (and thus are reimbursed through the CLS rate) include, but are not limited to, the following, if they are (1) not already covered by another Medicaid service provided to the beneficiary, (2) medically necessary for a particular CLS beneficiary, and (3) related to the beneficiary's IPOS goals of facilitating independence and productivity or of promoting community inclusion and participation:

- CLS staff compensation (wages, benefits, (such as health insurance and retirement contributions) payroll taxes, and Human Resource requirements which includes required trainings, supervision and planning meetings) for time spent on any activities covered by CLS, including CLS staff time spent on delivering CLS services in the beneficiary's residence, required training, planning meetings, supervision, travel with the beneficiary, and attendance at community activities with the beneficiary.
- Transportation costs for the beneficiary and the CLS staff (i.e., mileage) to go to and from community activities (not to and from medical appointments).
- Fees and other charges for a community activity for a CLS beneficiary and for the CLS worker to accompany the beneficiary in the community activity, including, for example: gym fee, movie ticket, theme park admission, meal in the community, fee for bowling, fee for horseback riding.
- Membership fees for organizations that support the identified CLS objectives.
- If a particular activity, put in the IPOS through the PCP process, meets the definition of medical necessity, and the definition of CLS, then it is part of the "scope" of the CLS service.

#### **IV. Fiscal Management**

"Fiscal intermediary services" are updated to "Fiscal Management Services" (FMS) and include the following addition:

FMS does not make a final determination on the amount, scope, or duration of services. No aspect of creating the budget is delegated to FMS personnel. The role of the FMS is to support the beneficiary. For example, the FMS supports the beneficiary to help ensure the budget created is implemented as planned.

#### **V. Person-Centered Planning (PCP)**

The PCP criteria are updated to include the following:

The PCP process must:

- Offer the beneficiary choice to a SD service arrangement (other than those previously terminated from SD service arrangements). The offer must include a discussion on how budgets are developed and can be flexibly used to implement services, summary of methods to implement SD service arrangements, and the allowable use of budget dollars to spend on all components of medically necessary service.
- Include discussion with the beneficiary regarding all components of services (i.e., for HSW SD CLS, this includes components such as transportation, activities, staff wages, employer costs, training time) as well as the amount, scope, and duration of each such component that may be medically necessary for the beneficiary. Components of services are defined in relevant service sections of the MDHHS Medicaid Provider Manual and MDHHS-developed Healthcare Common Procedure Coding (HCPCS) Code Charts.