**Appendix XVII, MDCP Eligibility TAC**

8-2022

**1 Texas Administrative Code Section 353.1155 Medically Dependent Children Program (MDCP)**

(a) An MCO assesses an individual's eligibility for MDCP.

(1) To be eligible for MDCP, a person must:

(A) be under 21 years old;

(B) live in Texas;

(C) meet the level of care criteria for medical necessity for nursing facility care as determined by HHSC;

(D) have an unmet need for support in the community that can be met through one or more MDCP services;

(E) choose MDCP as an alternative to nursing facility services, as described in 42 CFR Section 441.302(d);

(F) not be enrolled in one of the following Medicaid HCBS waiver programs approved by CMS:

(i) the Community Living Assistance and Support Services (CLASS) Program;

(ii) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(iii) the Home and Community-based Services (HCS) Program;

(iv) the Texas Home Living (TxHmL) Program; or

(v) the Youth Empowerment Services waiver;

(G) live in:

(i) the person’s home; or

(ii) an agency foster home as defined in Texas Human Resource Code, Section 42.002, (relating to Definitions); and

(H) be determined by HHSC to be financially eligible for Medicaid under Chapter 358 of this title (relating to Medicaid Eligibility for the Elderly and People with Disabilities), Chapter 360 of this title (relating to Medicaid Buy-In Program), or Chapter 361 of this title (relating to Medicaid Buy-In for Children Program).

(2) A person receiving Medicaid nursing facility services is approved for MDCP if the person requests services while residing in a nursing facility and meets the eligibility criteria listed in the above subsection. If a person is discharged from a nursing facility into a community setting before being determined eligible for Medicaid nursing facility services and MDCP, the person is denied immediate enrollment in the program.

(b) HHSC maintains a statewide interest list of people interested in receiving services through MDCP.

(1) A person may request that an individual's name be added to the MDCP interest list by:

(A) calling HHSC toll-free 877-438-5658;

(B) submitting a written request to HHSC; or

(C) generating a referral through the YourTexasBenefits.com, Find Support Services screening and referral tool.

(2) If a request is made per the above subsection, HHSC adds the person’s name to the MDCP interest list:

(A) if the person is a Texas resident; and

(B) using the date HHSC receives the request as the MDCP interest list date.

(3) For a person determined diagnostically or functionally ineligible during the enrollment process for the CLASS Program, DBMD Program, HCS Program or TxHmL Program:

(A) if the person’s name is not on the MDCP interest list, at the request of the person or LAR, HHSC adds the person’s name to the MDCP interest list using their interest list date for the waiver program that the person was determined ineligible as the MDCP interest list date;

(B) if the person’s name is on the MDCP interest list and the person’s interest list date for the waiver program that the person was determined ineligible is earlier than the person’s MDCP interest list date, at the request of the person or LAR, HHSC changes the person’s MDCP interest list date to their interest list date for the waiver program that the person was determined ineligible; or

(C) if the person’s name is on the MDCP interest list and the person’s MDCP interest list date is earlier than the person’s interest list date for the waiver program that the person was determined ineligible, HHSC does not change the person’s MDCP interest list date.

(4) This paragraph applies to a person who is enrolled in MDCP and, because the person does not meet the level of care criteria for medical necessity for nursing facility care, is determined ineligible for MDCP after Nov. 30, 2019. The person or the person’s LAR may request one time that HHSC add the person’s name to the first position on the MDCP interest list.

(5) This paragraph applies to a person who is enrolled in MDCP and, because the person does not meet the level of care criteria for medical necessity for nursing facility care or the requirement to be under 21 years old, is determined ineligible for MDCP after Nov. 30. The person or their LAR may request that HHSC add the person’s name to the interest list for any of the following programs or change the person’s interest list date for any of the following programs per:

(A) 40 TAC Section 45.202 (relating to CLASS Interest List) for the CLASS Program;

(B) 40 TAC Section 42.202 (relating to DBMD Interest List) for the DBMD Program;

(C) 40 TAC Section 9.157 (relating to HCS Interest List) for the HCS Program; and

(D) 40 TAC Section 9.566 (relating to TxHmL Interest List) for the TxHmL Program.

(6) HHSC removes a person’s name from the MDCP interest list if:

(A) the person is deceased;

(B) the person is assessed for MDCP and determined to be ineligible and has had an opportunity to exercise their right to a fair hearing, as described in Chapter 357 of this title (relating to Hearings);

(C) the person, medical consenter, or LAR requests in writing that the person’s name be removed from the interest list; or

(D) the person moves out of Texas, unless the person is a military family member living outside of Texas as described in Texas Government Code Section 531.0931:

(i) while the military member is on active duty; or

(ii) for less than one year after the former military member's active duty ends.

(7) A person assessed for MCDP and determined to be ineligible, as described in paragraph (6)(B) of this subsection, may request to have the person’s name added to the MDCP interest list as described in paragraph (1) of this subsection.

(c) An MCO develops a person-centered individual service plan (ISP) for each member in MDCP, and all applicable documentation, as described in the STAR Kids Handbook and the Uniform Managed Care Manual (UMCM).

(1) An ISP must:

(A) include services described in the waiver approved by CMS;

(B) include services necessary to protect a member’s health and welfare in the community;

(C) include services that supplement rather than supplant the member’s natural supports and other non-Medicaid supports and services for which the member may be eligible;

(D) include services designed to prevent the member’s admission to an institution;

(E) include the most appropriate type and amount of services to meet the member’s needs in the community;

(F) be reviewed and revised if the member’s needs or natural supports change or at the request of the member or LAR; and

(G) be cost effective.

(2) If a member’s ISP exceeds 50 percent of the cost of the member’s level of care in a nursing facility to safely serve the member’s needs in the community, HHSC must review the circumstances and, when approved, provide funds through general revenue.

(d) An MCO is responsible for conducting a reassessment and developing an ISP for each member’s continued eligibility for MDCP, in accordance with the policies and procedures outlined in the STAR Kids Handbook, UMCM, or materials designated by HHSC and in accordance with the timeframes outlined in the MCO's contract.

(e) An MCO is responsible for authorizing a provider of a member’s choice to deliver services outlined in the member’s ISP.

(f) A member participating in MDCP has the same rights and responsibilities as any member enrolled in managed care, as described in Subchapter C of this chapter (relating to Member Bill of Rights and Responsibilities), including the right to appeal a decision made by HHSC or an MCO and the right to a fair hearing, as described in Chapter 357 of this title.

(g) HHSC conducts utilization reviews of MCOs providing MDCP services.

Source Note: The provisions of this Section 353.1155 adopted to be effective Nov. 1, 2016, 41 TexReg 8265; amended to be effective Feb. 7, 2022, 47 TexReg 494.