

# Federal Laws & Regulations

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## 1. 42 C.F.R. § 430.12(c)(1)(ii) – State Plan Amendments

- **Summary:** Requires a state Medicaid agency to submit a State Plan Amendment (SPA) to CMS when there is a material change in state law, policy, organization, or Medicaid operations.
    - The proposed 'bid out' would be a 'material change' in Michigan's Medicaid plan, triggering 42 C.F.R. § 430.12(c)(1)(ii), and to date, we are unaware of MDHHS submitting any proposed amendment to account for the 'bid out' in that plan.
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## 2. Centers for Medicare & Medicaid Services (CMS) Oversight

- **Summary:** CMS must approve state-level changes to Medicaid plans, including changes resulting from waiver modifications or structural reorganizations.
    - CMS has not approved the “bid out” plan, and the change contradicts previously approved waiver structures that rely on CMHSPs and PIHPs.
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## 3. 45 C.F.R. § 75.329(f) – Noncompetitive Procurement Waiver

- **Summary:** Federal procurement rules require competitive bidding unless a waiver is granted by the awarding agency.
    - On February 20, 2001, Michigan received a waiver of the competitive procurement regulations. Proceeding with competitive procurement now is inconsistent with that waiver and further underscores the need for a CMS-approved plan amendment.
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## 4. 42 C.F.R. § 430.2(b); 45 C.F.R. Part 75 – Federal Award Management

- **Summary:** These regulations define federal financial assistance and how states must manage Medicaid funds received from HHS.
    - The structure of the Medicaid behavioral health system must comply with these rules. Altering procurement and contracting methods without federal approval could violate these standards.
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## 5. 42 U.S.C. § 1396a(a)(8); 42 C.F.R. § 435.930 – Reasonable Promptness Requirement

- **Summary:** Medicaid services must be provided with “reasonable promptness” to all eligible beneficiaries.
  - Waitlists caused by underfunding or system disruption from the “bid out” could violate this requirement, exposing the state to litigation. Courts facing this question have found defendants in violation of the provision when eligible individuals are placed on waiting lists for medically necessary services.

## Federal Laws & Regulations (cont.)

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### 6. 28 C.F.R. § 35.130(d); *Olmstead v. L.C.*, 527 U.S. 581 (1999) – Integration Mandate

- **Summary:** Under the ADA, services must be provided in the most integrated setting appropriate.
  - A fragmented or delayed system resulting from the “bid out” could lead to ADA violations if individuals are not served in integrated community settings. The Court noted that a state may defend an integration claim by showing it has a 'comprehensive, effectively working plan' for placing people in community settings 'and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated.’”

## Michigan Laws & Codes

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### 1. MCL 330.1116(2)(b) – MDHHS Must Maintain a Statewide CMHSP Network

- **Summary:** Requires MDHHS to maintain “an adequate and appropriate system of community mental health services programs throughout the state.”
  - The “bid out” circumvents the CMHSP network, violating MDHHS’s statutory obligation to deliver services through this system. The Michigan Mental Health Code requires MDHHS to maintain the state's CMHSP network. It says so expressly, using mandatory language that MDHHS “shall ... administer the provisions of [the Mental Health Code] so as to promote and maintain an adequate and appropriate system of community mental health services programs throughout the state.”

### 2. MCL 330.1204b – Formation and Authority of PIHPs

- **Summary:** Allows CMHSPs to form regional entities (PIHPs) with all powers and authorities of CMHSPs.
  - *The structure explicitly supports a **sole-source model** through CMHSPs and PIHPs. Michigan's Mental Health Code explicitly supports a **sole-source model** through CMHSPs, which have the right to collaborate and form PIHPs with the same ‘power, privilege, or authority’ as the participating CMHSPs.*

### 3. MCL 400.109f – MDHHS Selection of Specialty Prepaid Health Plans

- **Summary:** Permits MDHHS to choose “specialty prepaid health plans” for behavioral health services.
  - This statute was intended to validate existing CMHSPs as the delivery system—not to authorize private insurers or new entities. The term ‘specialty prepaid health plans,’ as used in MCL 400.109f, does not mean the current PIHPs. Instead, this is a reference to MDHHS’s practice, back in 2000, of using the then-existing CMHSPs to provide Medicaid mental health services.

# Michigan Laws & Codes (cont.)

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## 4. MCL 330.1232b – Sanctions and Standards for CMHSPs as PIHPs

- **Summary:** Outlines when MDHHS can sanction CMHSPs operating as PIHPs.
    - A funding cut or termination must follow formal sanction processes, including timely written notice and the opportunity for a hearing. MDHHS cannot bypass these protections by using procurement to eliminate CMHSPs.
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## 5. MCL 330.1234; MCL 330.1236 – Reallocation or Withdrawal of Funds

- **Summary:** Permits MDHHS to adjust funding only under certain procedures and with board concurrence.
    - Any attempt to cut off funding as part of the “bid out” process must comply with these statutory processes, not executive discretion alone. If the department determines that funds that have been allocated to a program are not needed by that program, the department may, with the concurrence of the board, withdraw the funds.
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## 6. MCL 330.1308; MCL 330.1310 – State Payment of 90% of Net Cost

- **Summary:** The state must pay 90% of a CMHSP’s net cost, defined as costs not already covered by other funding.
    - Medicaid capitation payments are excluded, meaning CMHSPs are financially vulnerable if the PIHP structure collapses under a “bid out.” Capitation payments are similarly paid for using federal and state funds. Therefore, capitation payments are not considered part of the ‘net cost’ that triggers the state’s 90% obligation under MCL 330.1308.
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## 7. Michigan Public Act No. 121 of 2024, §§ 111, 901, 902 – Budget Appropriations

- **Summary:** The legislature required that MDHHS contract with CMHSPs/PIHPs and use those funds accordingly. A “bid out” directly contradicts this law.
    - *The department shall use the funds appropriated to support a system of comprehensive community mental health services under the full authority and responsibility of local CMHSPs or PIHPs.*
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## 8. Mich. Const. art. 5, § 20 – Executive Power to Reduce Appropriations

- Summary:** Limits the Governor’s authority to reduce or impound funds appropriated by the legislature. The executive branch possesses no inherent constitutional power to decline to spend in the face of a clear legislative intent and statutory directive to do so.
- MDHHS withholding funds from CMHSPs and PIHPs without legislative approval violates constitutional separation of powers.

# Relevant Court Cases

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## 1. Huron Behavioral Health v. Department of Community Health, 293 Mich App 491 (2011)

- **Summary:** Interprets the Mental Health Code's structural intent as supporting a decentralized, CMHSP-led system. The court recognized the legislative direction to move delivery of mental health services to CMHSPs, reinforcing their central role.
  - **Quote:** *"The state has always retained primary responsibility for mental health services, but the objective since 1974 has been to shift responsibility to localities and, in 1995, the local entity changed from counties to CMHSPs."*
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## 2. Waskul v. Washtenaw County CMH, 979 F.3d 426 (6th Cir. 2020)

- **Summary:** Addresses "reasonable promptness" under Medicaid and barriers to service access due to funding mechanisms. Underfunding and resulting waitlists for medically necessary services may violate federal law. The "bid out" risks worsening this.
  - **Quote:** *"The federal regulations make clear that the standard for 'reasonable promptness' is within at least forty-five or ninety days, depending on the basis for an individual's application."*
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## 3. Muskegon County v. MDHHS, 346 Mich App 28 (2023)

- **Summary:** Clarified the limits of MDHHS's financial obligations when PIHPs fail to pay CMHSPs. If a PIHP fails due to procurement changes, CMHSPs may be left with unreimbursed service costs and little legal recourse.
  - **Quote:** *"CMHSPs have no direct contractual relationship with the DHHS."*
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## 4. International Union v. State, 194 Mich App 489 (1992)

- **Summary:** Found the executive branch violated the constitution by withholding legislatively appropriated funds. This case directly supports the claim that MDHHS cannot impound behavioral health funds authorized by the legislature.
- **Quote:** *"The executive branch exceeded [its] discretion and constitutional authority by ignoring the clear legislative intent and statutory directive to spend."*