

481—70.24 (231D) Involuntary discharge from the program.

70.24(1) Program initiation of discharge. If a program initiates the involuntary discharge of a participant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the participant or participant's legal representative contests the discharge, the following procedures shall apply:

a. The program shall notify the participant or participant's legal representative, in accordance with the contractual agreement, of the need to discharge the participant and of the reason for the discharge.

b. If, following the internal appeal process, the program upholds the discharge decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the discharge.

70.24(2) Discharge pursuant to results of monitoring or complaint or program-reported incident investigation by the department. If one or more participants are identified as exceeding the admission and retention criteria for participants and need to be discharged as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any participant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the participant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the participant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

(1) *Consideration of response.* Within 10 working days of receipt of the program's response for each identified participant, the department shall consider the response and make a final finding regarding the continued retention of a participant.

(2) *Amending the regulatory insufficiency.* If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) *Retaining regulatory insufficiency.* If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision.

(4) *Effect of the filing of an appeal.* If an appeal is filed, the participant who exceeds admission and retention criteria shall be allowed to continue to participate in the program until all administrative appeals have been exhausted. Appeals filed that relate to the participant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the participant's needs shall be provided during that period of time.

(5) *Request for waiver of criteria for retention of a participant in a program.* To allow a participant to continue to participate in the program, the program may request a waiver of criteria for retention of a

participant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

[**ARC 8177B**, IAB 9/23/09, effective 1/1/10]