

# MONTANA ADMINISTRATIVE REGISTER

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PAGES 304-357



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 4

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM                    )  
12.2.306 pertaining to department                )  
liaisons    )

) NOTICE OF PUBLIC HEARING ON  
PROPOSED REPEAL

TO: All Concerned Persons

1. On March 22, 2024, at 10:00 a.m., the Department of Fish, Wildlife and Parks (FWP) will hold a public hearing via ZOOM meeting platform to consider the proposed repeal of the above-stated rule. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: +1 646 558 8656  
Meeting ID: 844 0191 1958  
Passcode: 174958

2. FWP will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact FWP no later than 5:00 p.m. on March 8, 2024, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [regina.reynolds@mt.gov](mailto:regina.reynolds@mt.gov).

3. The rule proposed to be repealed is as follows:

12.2.306 LIAISON

AUTH: 2-3-103, MCA  
IMP: 2-3-103, MCA

REASONABLE NECESSITY: This rule was adopted on April 5, 1976. FWP seeks to repeal this rule as an unnecessary regulation because it is archaic and no longer reflects how the commission or the department engages with the public, including citizen organizations, in decision making processes.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Erik Wickman, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-7826; or e-mail [erik.wickman@mt.gov](mailto:erik.wickman@mt.gov), and must be received no later than 5:00 p.m., March 25, 2024.

5. Regina Reynolds or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at [https://public.govdelivery.com/accounts/MTFWP/subscriber/new?topic\\_id=MTFWP\\_236](https://public.govdelivery.com/accounts/MTFWP/subscriber/new?topic_id=MTFWP_236).

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton  
Jaime MacNaughton  
Rule Reviewer

/s/ Dustin Temple  
Dustin Temple  
Director  
Fish, Wildlife and Parks

Certified to the Secretary of State February 8, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through IV pertaining to ) PROPOSED ADOPTION  
SUD voucher programs )

TO: All Concerned Persons

1. On March 18, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89518873783?pwd=cVIHdjFUZUJUd1NpUzhTN3JVZEpJZz09>, meeting ID: 895 1887 3783, and password: 198397; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 895 1887 3783, and password: 198397. Find your local number: <https://mt-gov.zoom.us/u/kbJT3TH7b2>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 4, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rules as proposed to be adopted provide as follows, new matter underlined, deleted matter interlined:

NEW RULE I SUBSTANCE USE DISORDER VOUCHER PROGRAM,  
PURPOSE (1) The purpose of the rules in this subchapter is to establish standards for the Substance Use Disorder Voucher Program, as provided in Title 53, chapter 24, part 2, MCA.

(2) This program is intended to cover the cost of substance use disorder treatment room and board that is not otherwise covered by insurance or another assistance program.

(3) This program is subject to available funding.

AUTH: 53-24-204, MCA  
IMP: 53-24-218, MCA

NEW RULE II SUBSTANCE USE DISORDER VOUCHER PROGRAM,  
DEFINITIONS In addition to the terms defined in 53-24-103, MCA, the following

definitions shall apply in the interpretation and enforcement of the rules in this subchapter:

(1) "American Society of Addiction Medicine (ASAM) Criteria" means guidelines for placement, continued stay, and transfer, or discharge of individuals with addiction and co-occurring conditions developed by the American Society of Addiction Medicine.

(2) "ASAM 3.1" means substance use disorder clinically managed low-intensity residential treatment services for adults or adolescents, which is a level of care described in the ASAM Criteria. ASAM 3.1 is a licensed community-based residential facility that functions as a supportive, structured living environment. Individuals are provided stability and skills building to help prevent or minimize continued substance use. This level of care includes a minimum of five hours per week of professionally directed treatment services.

(3) "BHDD Medicaid Manual" means the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health adopted and incorporated by reference in ARM 37.27.902. The manual can be found at: <https://dphhs.mt.gov/BHDD/BHDDMedicaidServicesProviderManual>.

(4) "Substance use disorder" means chemical dependency, as defined in 53-24-103, MCA.

AUTH: 53-24-204, MCA

IMP: 53-24-218, MCA

NEW RULE III SUBSTANCE USE DISORDER VOUCHER PROGRAM, REQUIREMENTS (1) In order to participate in the substance use disorder voucher program, an individual must:

- (a) live in Montana;
- (b) be 14 years of age or older;
- (c) have an annual family income at or below 200% of federal poverty guidelines;
- (d) meet medical necessity described in the BHDD Medicaid Manual for ASAM 3.1 services;
- (e) receive a prior authorization for ASAM 3.1 services from the Quality Improvement Organization (QIO); and
- (f) currently be receiving ASAM 3.1 services.

AUTH: 53-24-204, MCA

IMP: 53-24-218, MCA

NEW RULE IV SUBSTANCE USE DISORDER VOUCHER PROGRAM, REIMBURSEMENT (1) In order to be reimbursed for room and board under the Substance Use Disorder Voucher Program in [NEW RULE I], a program must be a state-approved substance use disorder facility under ARM 37.27.106 and licensed as an ASAM 3.1 substance use disorder facility pursuant to ARM Title 37, chapter 106, subchapter 14.

(2) A provider that meets requirements in [NEW RULE III] and seeks reimbursement for room and board under the Substance Use Disorder Voucher Program must complete and submit the designated request form to the department to obtain reimbursement for such services provided to a qualified individual.

(3) The department will review the request and provide approval or denial to the provider within 10 working days of receipt of the request.

(4) If the request is approved, the department will issue payment to the provider.

(5) The department will reimburse providers as outlined in contract or policy.

AUTH: 53-24-204, MCA

IMP: 53-24-218, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services proposes to add NEW RULES I through IV to the Chemical Dependency Program rules, which are found in ARM Title 37, chapter 27, which implement the requirements for state approval of treatment facilities, as provided in 53-24-208, MCA. The adoption of these new rules will allow a substance use disorder (SUD) voucher program to reimburse SUD treatment room and board not otherwise covered by insurance or another assistance program.

The department will utilize its contracts with ASAM 3.1 treatment facilities to establish the reimbursement process outlined in NEW RULE IV.

The following explains each proposed new rule and the reasonable necessity:

NEW RULE I – This proposed rule describes the purpose and statutory authority for the SUD housing voucher program.

NEW RULE II – This proposed rule would provide the definitions applicable to the SUD housing voucher program. The proposed definitions would provide clarity regarding terms used in the rules and avoid unnecessary repetition.

NEW RULE III – This proposed rule would describe the requirements for participation in the SUD housing voucher program. The program participation requirements would ensure that public funds are appropriately used for the intended purpose of the SUD housing voucher program, which is to assist lower-income Montanans in paying for room and board as they receive treatment for substance use disorder.

NEW RULE IV – This proposed rule describes the proposed process for reimbursement under the SUD housing voucher program. The provider reimbursement requirements would ensure that public funds are appropriately used for the intended purpose of the SUD housing voucher program.



### Fiscal Impact

This proposed rule amendment has a cost of \$300,000 in state fiscal year (SFY) 2024 and \$300,000 in SFY 2025 from the HEART fund.

Reimbursement will be at \$35 per day with a \$1000 per individual limit per SFY. This reimbursement was included in the accepted fiscal note for HB 311 in the 2023 legislative session.

5. The department intends for these proposed rule adoptions to be effective retroactively to July 1, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., March 22, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 6.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules> or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email and by phone on August 18, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable,

the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias

Brenda K. Elias  
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.27.902, 37.86.4401,	)	PROPOSED AMENDMENT AND
37.87.102, 37.87.702, 37.88.101,	)	ADOPTION
37.89.201, 37.106.1902,	)	
37.106.1936, 37.106.1956 and the	)	
adoption of NEW RULE I pertaining	)	
to Clinical Mental Health Licensure	)	
Candidate Medicaid Service	)	
Reimbursement	)	

TO: All Concerned Persons

1. On March 15, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/83315896029?pwd=akdjN3BTZHovUFI0TlViYW9FRnQ5UT09>, meeting ID: 833 1589 6029, and password: 461059; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 833 1589 6029, and password: 461059. Find your local number: <https://mt-gov.zoom.us/j/83315896029?pwd=akdjN3BTZHovUFI0TlViYW9FRnQ5UT09>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 1, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rules as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained

from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA  
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS (1) remains the same.

(2) "Baseline PPS rate" is defined as an RHC's or FQHC's current prospective payment system (PPS) rate established in accordance with ARM 37.86.4413, 37.86.4420(2), 37.86.4409, or 37.86.4410, as adjusted annually by the Medicare economic index (MEI).

(3) through (7) remain the same.

(8) "Health professional" means ~~services furnished by a:~~

(a) through (h) remain the same.

(i) licensed addiction counselor (LAC); ~~and~~

(j) clinical pharmacist practitioner; ~~and~~

(k) in-training mental health professional, as defined in [NEW RULE I].

(9) through (18) remain the same.

AUTH: 53-2-201, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.102 MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) "In-training mental health professional services" refers to services provided by a licensure candidate in accordance with [NEW RULE I].

(1) through (8) remain the same but are renumbered (2) through (9).

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, ~~53-21-201, 53-21-202,~~ 53-21-701, 53-21-702, MCA

37.87.702 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "In-training mental health professional services" ~~are services provided under the supervision of a licensed mental health professional by an individual who has completed all academic requirements for licensure as a psychologist, clinical social worker, licensed professional counselor, or licensed marriage and family therapist and is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapters 189 and 219.~~ refers to services provided by a candidate for licensure who:

(a) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(b) is under the supervision of a licensed mental health professional approved by the candidate's licensing board;

(c) is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapter 189 or 219; and

(d) has an approved supervision plan through the candidate's licensing board.

(4) remains the same.

(5) "Mental health center services for youth with serious emotional disturbance" reimbursed by Medicaid means community-based psychiatric rehabilitation and support services, comprehensive school and community treatment programs, day treatment services, therapeutic foster care services, home support services, in-training mental health professional services, outpatient therapy services, mental health professional services, and targeted case management services.

(6) through (11) remain the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.201 NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. The department adopts and incorporates by reference the manual as part of this rule. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

AUTH: 53-2-201, 53-21-1405, MCA

IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (4) remain the same.

(5) "Community-based psychiatric rehabilitation and support" ~~is means the definition~~ as defined in ARM 37.88.901.

(6) through (9) remain the same.

(10) "Forensic mental health facility" (FMHF) means 24-hour, seven days a week, secured non hospital-based forensic psychiatric treatment for criminal justice involved adults who are committed by a court of competent jurisdiction for the purpose of psychiatric treatment or evaluation.

(11) remains the same.

(12) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.320 through 300.325, amended as of October 30, 2007. The department adopts and incorporates by reference that version of 34 CFR 300.320 through 300.325. A copy of the regulations may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(13) and (14) remain the same.

(15) "In-training mental health professional" refers to an individual providing services in accordance with in-training mental health professional services as defined in ARM 37.87.702.

~~(15)(16) "In-training practitioner services mental health professional services"~~ means the definition is as defined in ARM 37.88.901 ARM 37.87.702.

(16) remains the same but is renumbered (17).

~~(17)(18)~~ "Licensed mental health professional" means:

(a) a physician, clinical psychologist, social worker, licensed marriage and family therapist, or professional counselor licensed to practice in Montana;

(b) and (c) remain the same.

(18) through (20) remain the same but are renumbered (19) through (21).

~~(21)~~(22) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license or these same services provided by an in-training ~~practitioner~~ mental health professional in a mental health center.

(22) through (32) remain the same but are renumbered (23) through (33).

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, MCA

37.106.1936 MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT (1) through (4) remain the same.

(5) Each program therapist or in-training ~~practitioner~~ therapist mental health professional in the program shall carry an active caseload not to exceed 12 day treatment clients. The therapist or mental health professional who carries the caseload must also provide the therapy and must be on site during the entire day treatment hours of operation unless the therapist is attending a meeting offsite that pertains to one of the day treatment client's treatment. The program supervisor may carry a caseload of up to six day treatment clients.

(6) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, MCA

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT), SERVICES AND STAFFING

(1) through (7) remain the same.

(8) Each CSCT team must include a mental health professional, who may be a licensed or in-training mental health professional, as defined in ARM 37.87.702~~(3)~~. In-training mental health professionals must be:

(a) remains the same.

(b) supervised ~~according to ARM 24.219.422~~ in accordance with ARM Title 24, chapter 219.

(9) and (10) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The rule proposed to be adopted provides as follows, new matter underlined, deleted matter interlined:

NEW RULE I IN-TRAINING MENTAL HEALTH PROFESSIONAL SERVICES BILLING MEDICAID (1) To bill and receive reimbursement for services rendered by an in-training mental health professional, a provider must be a licensed mental health center or meet the criteria outlined in this rule.

(2) For the purposes of this rule:

- (a) "Face-to-face" has the meaning provided in ARM 24.219.301.
- (b) "In-training mental health professional" refers to an individual providing in-training mental health professional services, as that term is defined in this rule.
- (c) "In-training mental health professional services" refers to services provided by a candidate for licensure who:
  - (i) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), clinical social worker, licensed professional counselor, or licensed marriage and family therapist;
  - (ii) is under the supervision of a licensed mental health professional approved by the candidate's licensing board;
  - (iii) is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapter 189 or 219; and
  - (iv) has an approved supervision plan through the candidate's licensing board.
- (3) The provider's practice setting must:
  - (a) provide crisis services, medication management, and outpatient mental health services;
  - (b) employ or contract with a licensed health care professional who is licensed to prescribe medication for mental health/behavioral health disorders;
  - (c) employ or contract with the licensed mental health professional who is approved by the candidate's licensing board to serve as supervisor to the candidate; and
  - (d) have at least one licensed mental health professional available for face-to-face supervision of the candidate when the supervisor is not available.
- (4) The supervisor must provide face-to-face supervision of the licensure candidate in accordance with the licensure board's approved supervision plan and as needed. The provider and supervisor may not charge the candidate for supervision. The designated supervisor must be a supervisor of record with the candidate's licensing board and have assumed responsibility for the candidate's continued training and for services provided by the candidate.
- (5) The candidate must be an employee of the provider. The provider is not permitted to contract for in-training mental health professional services.
- (6) The provider must provide professional liability insurance for the candidate's professional services.
- (7) An in-training mental health professional may not engage in independent practice.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.27.902, 37.86.4401, 37.87.102, 37.87.702, 37.88.101, 37.89.201, 37.106.1902, 37.106.1936, and 37.106.1956. In addition, the department proposes adopting NEW RULE I. These updates would expand the ability to bill the Montana



Medicaid Program for in-training mental health professional services provided to Medicaid beneficiaries.

#### Licensure Candidate Billing Medicaid

This proposed rule would expand the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. This proposal is in response to mental health professionals who requested the department approve additional clinical locations at which in-training mental health professional services can be reimbursed by Medicaid.

Montana Medicaid currently reimburses for in-training mental health professional services in certain settings through a combination of administrative rule and policy. Currently Montana Medicaid allows mental health centers, Tribal 638, Indian Health Services (IHS), FQHC, and urban Indian health centers to be reimbursed for in-training mental health professionals.

The department determined that expanding practice locations that can bill for in-training mental health professional services would support the Integrated Behavioral Health (IBH) model, which expands access to mental health care. These additional sites include critical access hospitals or obstetric offices. Expanding reimbursable service locations for behavioral health services would ensure this work allowing licensure candidates to be reimbursed at additional locations increased access to services in Montana.

In-training mental health professionals are at the beginning of their careers and represent the next generation of the mental health professional workforce. They are licensed clinical professional counselor (LCPC) licensure candidates, licensed clinical social worker (LCSW) licensure candidates, licensed marriage and family therapist (LMFT) licensure candidates, and psychologist postdoctoral supervisees providing services under a temporary permit.

The following explains each proposed change and the reasonable necessity:

ARM 37.27.902 – This proposed change adopts a revised provider manual that includes the expanded the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members.

ARM 37.86.4401 – This proposed change would permit rural health clinics and federally qualified health centers to be reimbursed for in-training mental health professional services provided to Medicaid members.

ARM 37.87.102 – The department proposes to include "in-training mental health professional services" terminology in this rule and refer to NEW RULE I, which explains in detail the requirements for reimbursement for the service. Implementing statutes are being stricken because they have been repealed.

ARM 37.87.702 – The department proposes to change the definition of "in-training mental health professional services" to align with language in NEW RULE I. This update will not impact in-training mental health professional services provided by a mental health center.

ARM 37.88.101 and 37.89.201 – These proposed changes would adopt the revised BHDD provider manuals that include expanded practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. The changes would affect services provided to both Medicaid members and eligible non-Medicaid members.

ARM 37.106.1902 – In this rule relating to treatment of adults in a mental health center, the department proposes to align the definition of "in-training mental health professional" with ARM 37.27.702, which is located in the subchapter relating to treatment of youth in a mental health center. This update will not impact in-training mental health professional services provided by a mental health center. The department also proposes to include licensed marriage and family therapists to the definition of licensed mental health professional to conform the rules to current practice.

ARM 37.106.1936 – The department proposes to align existing rule language with the term "in-training mental health professional," which is used and defined in these proposed rule changes.

ARM 37.106.1956 – ARM Title 24, chapter 219 has additional requirements related to supervision, and the department proposes to refer to these rules to ensure alignment with all Department of Labor and Industry licensure candidate supervision requirements.

NEW RULE I – The department proposes to adopt NEW RULE I into the subchapter that explains general Medicaid services. The department intends for the expanded practice settings to apply to all Medicaid services that meet the requirements set forth in this rule notice. NEW RULE I defines necessary language and sets forth the requirements a provider must meet to receive reimbursement from Medicaid for providing in-training mental health services to a Medicaid member.

#### Fiscal Impact

The following table displays the state fiscal year (SFY) 24 and SFY 25 projected fiscal impact arising from the proposal to expanding reimbursement for in-training mental health professional services in qualifying settings.

Provider Type	SFY 2024 Budget Impact (Federal Funds)	SFY 2024 Budget Impact (State Funds)	SFY 2024 Budget Impact (Total Funds)
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Mental Health Clinic	\$215,254	\$57,003	\$272,258
Critical Access Hospitals	\$52,872	\$13,487	\$66,359
Federally Qualified Health Centers	\$0	\$0	\$0
Hospitals - Outpatient	\$58,173	\$13,421	\$71,594
Group Clinics	\$259,249	\$76,597	\$335,846
Rural Health Clinics	\$0	\$0	\$0

Provider Type	SFY 2025 Budget Impact (Federal Funds)	SFY 2025 Budget Impact (State Funds)	SFY 2025 Budget Impact (Total Funds)
Mental Health Clinic	\$627,214	\$165,601	\$792,815
Critical Access Hospitals	\$143,157	\$36,410	\$179,568
Federally Qualified Health Centers	\$0	\$0	\$0
Hospitals - Outpatient	\$157,494	\$36,240	\$193,734
Group Clinics	\$702,064	\$206,736	\$908,800
Rural Health Clinics	\$0	\$0	\$0

6. The department intends these amendments to be retroactively effective to January 1, 2024.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., March 22, 2024.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 7.

10. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

13. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to rural emergency ) PROPOSED ADOPTION  
hospitals )

TO: All Concerned Persons

1. On March 19, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88477817370?pwd=YW5ZYjFvcIMrMHFQVzl2dHBRZUFxQT09>, meeting ID: 884 7781 7370, and password: 267843; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 884 7781 7370, and password: 267843. Find your local number: <https://mt-gov.zoom.us/u/kmHQBqall>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MINIMUM STANDARDS FOR RURAL EMERGENCY HOSPITALS (1) A rural emergency hospital shall comply with the conditions of participation for rural emergency hospitals as set forth in 42 CFR Part 485 Subpart E in effect as of January 1, 2024. A copy of the cited requirements may be obtained from the Department of Public Health and Human Services, Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-234, MCA  
IMP: 50-5-234, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt NEW RULE I.

The 2023 legislature enacted House Bill 312, an act providing for the designation of rural emergency hospitals (REH). The bill was signed by the Governor on May 18, 2023. The department proposes to adopt NEW RULE I. Adoption of this new rule is necessary to provide reference to the Code of Federal Regulation (CFR) for compliance for licensure as an REH in the state of Montana.

### NEW RULE I

The department proposes to adopt this new rule to provide reference to the CFR requirements for rural emergency hospitals in effect as of January 1, 2024. Compliance with CFR requirements will determine compliance for state licensure.

### Fiscal Impact

This proposed rule adoption has no anticipated fiscal impact.

5. The department intends for this rule adoption to be retroactively effective to October 1, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., March 22, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 6.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on September 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.34.3005 pertaining to ) PROPOSED AMENDMENT  
congregate living reimbursement )  
rates )

TO: All Concerned Persons

1. On March 14, 2024, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88667080317?pwd=UDJECfISTnUyb2JuTDhkYWpVYTQ0QT09>, meeting ID: 886 6708 0317, and password: 981546; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 886 6708 0317, and password: 981546. Find your local number: <https://mt-gov.zoom.us/j/88667080317?pwd=UDJECfISTnUyb2JuTDhkYWpVYTQ0QT09>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 29, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Services Manual version 2, effective July 1, 2023. A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf>.



AUTH: 53-2-201, 53-6-402, MCA  
IMP: 53-2-201, 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to the congregate living reimbursement rates in the Montana Disabilities Program Services Manual with a retroactive date to July 1, 2023.

There are individuals in the Montana State Hospital (MSH), the Intensive Behavior Center (IBC), out-of-state facilities, and local hospitals throughout the state who likely could be served in a community setting, if providers were willing and able to serve them. These individuals have complex care needs that make securing placement in community services more challenging.

The proposed rule change would amend the DDP manual to add a tenth tier to congregate living in DDP's fee schedule to reflect the care required for individuals with the highest level of complex care needs. The daily rate for Tier 10 level of services will be \$546.04. The new tier will reimburse providers the daily rate for caring for the following categories of people:

1. Individuals with a pending petition for civil commitment to IBC or MSH;
2. Individuals transitioning from MSH or IBC to the community;
3. Individuals with complex care needs in other institutional settings or in-patient hospital; and
4. Individuals who are placed in or may in the future be placed in out-of-state facilities due to their high level of care needs.

Tier 10 level of service is intended to be short term and is available for up to 12 months unless an extension is determined to be medically necessary by the department.

#### ARM 37.34.3005

The proposed amendment would adopt the Montana Disabilities Program Services Manual version 2 which incorporates the changes specified below:

1. Addition of Tier 10 to Congregate Living fee schedule and associated language.
2. Correction of the index.
3. Clarification to transportation to reflect current practice permitting a temporary service increase for certain outlier scenarios.

#### Fiscal Impact

The department anticipates 10 clients will be served using the new complex care Tier 10 service in State Fiscal Year (SFY) 2024. Estimated SFY 2024 expenditures total \$830,527, with state share of \$299,322 and federal share of \$531,205.

SFY 2024 State Impact	SFY 2024 Federal Impact	SFY 2024 Total Impact
\$299,322	\$531,205	\$830,527

5. The department intends to apply this proposed rule amendment retroactively to July 1, 2023. Retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., March 22, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 6.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules> or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE BOARD OF INVESTMENTS  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM                     )  
8.97.2001, 8.97.2002, 8.97.2003,                     )  
8.97.2004, 8.97.2005, 8.97.2006,                     )  
8.97.2007, 8.97.2008, and 8.97.2009                     )  
pertaining to the Board of                     )  
Investments Conservation Reserve                     )  
Payment Enhancement Program                     )

NOTICE OF REPEAL

TO: All Concerned Persons

1. On January 12, 2024, the Board of Investments published MAR Notice No. 8-97-102 pertaining to the proposed repeal of the above-stated rules at page 1 of the 2024 Montana Administrative Register, Issue Number 1.
2. The board has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Dan Whyte  
Dan Whyte  
Rule Reviewer

/s/ Dan Villa  
Dan Villa  
Executive Director  
Board of Investments

Certified to the Secretary of State February 13, 2024.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 17.58.336 and 17.58.344 and	)	REPEAL
the repeal of ARM 17.57.101,	)	
17.57.102, 17.57.103, 17.57.104,	)	
17.57.105, 17.57.106, and 17.57.107	)	
pertaining to third-party review of	)	
claims and corrective action plans	)	
and cleanup of administrative rules	)	
no longer utilized	)	

TO: All Concerned Persons

1. On December 22, 2023, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-440 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1778 of the 2023 Montana Administrative Register, Issue Number 24.

2. The board has amended and repealed the above-stated rules as proposed.

3. The Petroleum Tank Release Compensation Board has considered the comments received. A summary of the comments and the board's responses are as follows:

COMMENT 1: Six commenters expressed concerns about a process or guidance being put in place with full considerations for expertise of the board and the third-party consultant chosen, initiation steps for a third-party review, and costs involved with a claim or work plan going to a third-party review for the owner and their consultant to be reimbursed, as well as transparency in the process for all stakeholders.

RESPONSE: The board agrees with the comments that communication with stakeholders and transparency are key to the third-party review process. Section 75-11-312, MCA does not require the board to have special expertise to utilize a third-party review process and there are no licensure requirements in the state of Montana that are in place for the evaluation of determining the qualifications of a consultant to choose. The board will continue to consider the issues presented for review and choose the consultant that has expertise in the issues, is available and willing to perform the review, and is cost effective. The board is constrained by law to provide reimbursement for remediation only. The board's first choice is to work with all stakeholders to reach an agreement, without invoking a third-party review, and that will continue.

COMMENT 2: Four commenters stated that third-party review is a waste of time and money, further delaying work in the field.

RESPONSE: Third-party review is provided for by statute; the new rules are just an implementation of that requirement. The board conducts five meetings a year to ensure that their review of work plans and claims provides for the timely processing of each. The board will continue to work to ensure the third-party review process runs efficiently, if utilized. The board's review of work plans is somewhat dependent on those being submitted before field season begins.

COMMENT 3: Four commenters expressed concern that stakeholders were not involved in crafting the rule language.

RESPONSE: The public hearing and comment periods are the stakeholders' voice in the process. The board promulgated the rule in compliance with the new statutory mandate to create procedures for third-party review.

COMMENT 4: Two commenters stated that they do not believe that the stakeholders or public are best served by allowing the board to have any role in technical evaluations relating to remedial investigations, and that the rule change is not in keeping with audit recommendation #2.

RESPONSE: The board was mandated to promulgate a rule that contains a process for third-party review, as allowed by 75-11-312, MCA. This statute grants the board the ability to hire a technical review for the purposes of ensuring the fund is being used in the most efficient manner. The rule changes are a result of legislative action and are not based on the audit.

COMMENT 5: One commenter expressed concern that the removal of previous rule language found in ARM 17.58.336(4) removed the director of the Petroleum Tank Cleanup section from having a science-based approach of site cleanup.

RESPONSE: The language in this rule was from a time when the board staff was part of the Department of Environmental Quality (DEQ) and the director of DEQ was on the board, which changed in 2003, and the rule had not yet been cleaned up to reflect that change. ARM 17.58.336(4) is only concerned with claim reimbursement, not science-based review of those claims.

COMMENT 6: One commenter stated that third-party review should only take place for actual remediation (clean-up) of the groundwater with a budget in excess of \$200,000.

RESPONSE: There are no monetary thresholds considered in 75-11-312, MCA, other than ensuring the fund is being used in the most efficient manner as it relates to both the work plan and claim review process as a whole. The proposed

rule does not add to or deviate from the statutory requirements but merely implements them as mandated.

/s/ Aislinn Brown  
Aislinn Brown  
Rule Reviewer

/s/ John Monahan  
John Monahan, Presiding Officer  
Petroleum Tank Release Compensation  
Board

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.40.1018 and 37.40.1127 )  
pertaining to Community First Choice )  
services and self-directed personal )  
care services )

TO: All Concerned Persons

1. On November 17, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1009 pertaining to the proposed amendment of the above-stated rules at page 1593 of the 2023 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.



BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.111.124 pertaining to Public        )  
Sleeping Accommodations                    )

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1045 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1796 of the 2023 Montana Administrative Register, Issue Number 24.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.106.310, 37.106.503,                )  
37.106.506, 37.106.1006, and                )  
37.106.1012 pertaining to health care        )  
facilities                                        )

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1048 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1799 of the 2023 Montana Administrative Register, Issue Number 24.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends these amendments to be applied retroactively to October 1, 2023, the effective date of HB 102.

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULE I pertaining to certificates of )  
nonviable birth )

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1056 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1804 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rule as proposed: NEW RULE I (37.8.306).

3. No comments or testimony were received.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State February 13, 2024.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee**

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

#### **Education Interim Committee**

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

#### **Children, Families, Health, and Human Services Interim Committee**

- Department of Public Health and Human Services

#### **Law and Justice Interim Committee**

- Department of Corrections
- Department of Justice

#### **Energy and Telecommunications Interim Committee**

- Department of Public Service Regulation

#### **Revenue Interim Committee**

- Department of Revenue
- Montana Tax Appeal Board

**State Administration and Veterans' Affairs Interim Committee**

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

**Transportation Interim Committee**

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

**Environmental Quality Council**

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water)**

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

### Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2023. This table includes notices in which those rules adopted during the period August 25, 2023, through February 9, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 or 2024 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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## EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in January 2024 appear. Potential vacancies from March 1, 2024 through March 31, 2024, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Alternative Health Care Board</b>			
Dr. Alisun Bonville Bozeman Qualifications (if required): Naturopath	Governor	Reappointed	1/17/2024 7/1/2026
Ms. Jacy O'Neill Billings Qualifications (if required): Acupuncturist	Governor	New	1/17/2024 7/1/2025
Ms. Holly Simonson Plentywood Qualifications (if required): Public Member	Governor	Beckstrom	1/17/2024 7/1/2025
Ms. Rhianna Weaver Bozeman Qualifications (if required): Acupuncturist	Governor	New	1/17/2024 7/1/2027
<b>Board of Barbers and Cosmetologists</b>			
Ms. Cassidy Hartford Missoula Qualifications (if required): Member affiliated with a school	Governor	New	1/17/2024 7/1/2027



**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Barbers and Cosmetologists Cont.</b>			
Ms. Robyn Kiesling Helena	Governor	New	1/17/2024 7/1/2026
Qualifications (if required): Member affiliated with a school			
<b>Board of Clinical Laboratory Science Practitioners</b>			
Ms. Cara Bushmaker Hamilton	Governor	Matthes	1/22/2024 7/1/2025
Qualifications (if required): Clinical Laboratory Science Practitioner			
Ms. Michelle Griffin Helena	Governor	New	1/22/2024 7/1/2026
Qualifications (if required): Clinical Laboratory Science Practitioner			
Mr. Will Peterman Hardin	Governor	New	1/22/2024 7/1/2024
Qualifications (if required): Clinical Laboratory Science Practitioner			
<b>Board of Housing</b>			
Mr. Kenneth Pitt Polson	Governor	Reappointed	1/1/2024 12/31/2027
Qualifications (if required): Water law experience			

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Optometry</b>			
Mr. Joshua Campbell Great Falls	Governor	Fontana	1/22/2024 7/1/2025
Qualifications (if required): Public Representative not engaged in practice of optometry			
Mr. Joe Vincent Great Falls	Governor	Kimball	1/22/2024 7/1/2025
Qualifications (if required): Registered Optometrist			
<b>Board of Physical Therapy Examiners</b>			
Mr. Brace Hayden Missoula	Governor	Noel	1/22/2024 7/1/2025
Qualifications (if required): Licensed Physical Therapist			
Mr. Doug Martin Hamilton	Governor	Claussen	1/22/2024 7/1/2026
Qualifications (if required): Licensed Physical Therapist			
<b>Board of Real Estate Appraisers</b>			
Mr. Peter Fontana Great Falls	Governor	Forbes	1/22/2024 7/1/2025
Qualifications (if required): Licensed or Certified Real Estate Appraiser			

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Real Estate Appraisers Cont.</b>			
Mr. Gregory Thornquist	Governor	Hall	1/22/2024
Helena			5/1/2024
Qualifications (if required): Licensed or Certified Real Estate Appraiser			
<b>Board of Realty Regulation</b>			
Ms. Patti Dundas	Governor	Wagner	1/22/2024
Billings			7/1/2025
Qualifications (if required): Real Estate Broker, salesperson, or property manager			
Mr. Matthew Sullivan	Governor	Ossono	1/22/2024
Florence			7/1/2027
Qualifications (if required): Real Estate Broker, salesperson, or property manager			
<b>Board of Speech-Language Pathologists and Audiologists</b>			
Dr. Hillary Carter	Governor	Reappointed	1/22/2024
Helena			7/1/2026
Qualifications (if required): Audiologist			
Ms. Barbara Doughty	Governor	Simpson	1/22/2024
Great Falls			7/1/2025
Qualifications (if required): Speech-Language Pathologist			

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Speech-Language Pathologists and Audiologists Cont.</b>			
Dr. Jennifer Schoffer Closson	Governor	New	1/22/2024
Lolo			7/1/2024
Qualifications (if required): Speech-Language Pathologist			
<b>Board of Water Well Contractors</b>			
Mr. Andy Eslinger	Governor	Reappointed	1/17/2024
Corvallis			7/1/2026
Qualifications (if required): Water Well Contractor			
<b>Future Fisheries Review Panel</b>			
Mr. Zachary Bashoor	Governor	Lane	1/25/2024
Arlee			7/1/2025
Qualifications (if required): Silviculturist			
Mr. Peter Skidmore	Governor	Boyd	1/25/2024
Bozeman			7/1/2025
Qualifications (if required): Geomorphology Hydrology (by board request)			
Ms. Gabrielle Thorsen	Governor	Goodwin	1/25/2024
Bigfork			7/1/2026
Qualifications (if required): High School Student			

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Ground Water Assessment Steering Committee</b>			
Mr. Walter Sales Manhattan	Governor	Reappointed	1/22/2024 7/1/2027
Qualifications (if required): Representative of Agricultural Water Users			
Mr. Mark Thompson Butte	Governor	Reappointed	1/22/2024 7/1/2027
Qualifications (if required): Industrial Water Users Representative			
<b>Montana Grass Conservation Commission</b>			
Ms. Audra Ortega Glasgow	Governor	Descheemaeker	1/1/2024 1/1/2027
Qualifications (if required): Holds active grazing preference			
Ms. Sigrid Pugrud Winnett	Governor	New	1/1/2024 1/1/2027
Qualifications (if required): Grazing District Officer or Director			
<b>Small Business Compliance Assistance Advisory Council</b>			
Mr. BJ Biskupiak Helena	Governor	Saha	1/17/2024 5/1/2025
Qualifications (if required): Owner of Small Business Stationary Sources			

**EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2024**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Small Business Compliance Assistance Advisory Council Cont.</b>			
Mr. Kenneth Holmlund	Governor	Hammer	1/7/2024
Miles City			5/1/2025
Qualifications (if required): Not an owner or representative of an owner of small business stationary sources			
<b>Western Montana Conservation Commission (WMCC)</b>			
Mr. Ronald Pifer	Governor	New	1/25/2024
Stevensville			7/1/2026
Qualifications (if required): Public Member			

**EXECUTIVE BRANCH VACANCIES – MARCH 1, 2024 THROUGH MARCH 31, 2024**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Architects and Landscape Architects</b> Mr. Matt Faure, Bozeman Qualifications (if required): Licensed architect	Governor	3/31/2024
<b>Board of Barbers and Cosmetologists</b> Ms. Katie Fontana, Great Falls Qualifications (if required): Member of the public	Governor	3/1/2024
<b>Board of County Printing</b> Mr. David McCumber, Butte Qualifications (if required): None Stated	Governor	3/31/2024
Mr. Jonathan McNiven, Huntley Qualifications (if required): None stated	Governor	3/31/2024
Commissioner James Larson, Belt Qualifications (if required): Cascade County Commissioner	Governor	3/31/2024
Commissioner Mary Armstrong, Glasgow Qualifications (if required): None stated	Governor	3/31/2024
<b>Public Employees' Retirement Board</b> Mr. Jason Strouf, Miles City Qualifications (if required): Active member of retirement system	Governor	3/31/2024

**EXECUTIVE BRANCH VACANCIES – MARCH 1, 2024 THROUGH MARCH 31, 2024**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council</b>		
Judge Mary Jane Knisely, Billings Qualifications (if required): Law enforcement and juvenile justice agencies, including juvenile and family court judges	Governor	3/1/2024
Ms. Geri Small, Lame Deer Qualifications (if required): Tribal Representative	Governor	3/1/2024
Ms. Georgia J. Cady, Columbus Qualifications (if required): Nonprofit, victim, and witness advocacy representative	Governor	3/1/2024
Ms. RaeGyn Trombley, Great Falls Qualifications (if required): Justice involved youth representative	Governor	3/1/2024
Mr. Qasim Abdul-Baki, Helena Qualifications (if required): Justice involved youth representative	Governor	3/1/2024
Ms. Rhonda Lindquist, Helena Qualifications (if required): Board of Crime Control board member	Governor	3/1/2024
Mr. Michael Chavers, Billings Qualifications (if required): Nonprofits and alternatives to incarceration representative	Governor	3/1/2024
Dr. Tamara Greeling, Billings Qualifications (if required): Justice involved youth representative	Governor	3/1/2024
Mrs. Holly Mook, Clancy Qualifications (if required): Volunteer Representative	Governor	3/1/2024



**EXECUTIVE BRANCH VACANCIES – MARCH 1, 2024 THROUGH MARCH 31, 2024**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council Cont.</b>		
Dr. Emily Sallee, Frenchtown Qualifications (if required): Licensed mental health and substance use provider	Governor	3/1/2024
Ms. Brie Shulman, Missoula Qualifications (if required): Alternatives to incarceration representative	Governor	3/1/2024
Mrs. Patricia Steinwand, Helena Qualifications (if required): Parent of justice involved youth	Governor	3/1/2024
Mr. Isaac Nehring, Helena Qualifications (if required): Justice involved youth representative	Governor	3/1/2024
Mr. Wyatt English, Miles City Qualifications (if required): Member of Board of Crime Control	Governor	3/1/2024
Ms. April Gabler, Missoula Qualifications (if required): Parent of Justice Involved Youth	Governor	3/1/2024
Ms. Lilla Guiberson, Dillon Qualifications (if required): Youth Member	Governor	3/1/2024
Ms. Christy Hendricks, Helena Qualifications (if required): School violence/vandalism experience	Governor	3/1/2024

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**CHRISTI JACOBSEN**  
SECRETARY OF STATE

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