

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 9

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 MONTANA STATE LIBRARY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 10.102.4003 pertaining to ) AMENDMENT  
state aid to public libraries )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On June 12, 2024, the Montana State Library proposes to amend the above-stated rule.

2. The State Library 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 State Library no later than 5:00 p.m. on June 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email [glighthiser@mt.gov](mailto:glighthiser@mt.gov).

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

10.102.4003 DIRECT STATE AID TO PUBLIC LIBRARIES FOR PER  
CAPITA AND FOR PER SQUARE MILE SERVED (1) remains the same.

(2) The per square mile portion of the direct state aid to public libraries will be updated during the decennial census process and distributed annually based on the following:

(a) and (b) remain the same.

(c) Annually, MSL staff will consult with the Governor's Office of Budget and Program Planning and use its collected tribal enrollment number. If an accredited tribal college library serving the public qualifies for state aid, their tribal enrollment number will be multiplied by the per capita amount of state aid. The resulting total for all eligible accredited tribal college libraries will then be subtracted from the overall state aid budget allocated for eligible public libraries. The remaining state aid will be distributed annually, guided by the criteria set forth above.

(3) remains the same.

(4) In each county which has no public libraries, the State Library will contact the county commission indicating that the county will qualify for per capita and per square mile state aid if the county commission establishes county-wide library services as provided for in state statute, or if the county commission contract for library services with another county or municipal library as provided for in state statute. If such means are not established with a six-month period following written notice received from the State Library, the state aid which would have gone to the

county will be allotted to the federation headquarters library in whose area this county is located for use in federation activities.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: These amendments are proposed to update the language of the rule to reflect changes to 22-1-326, MCA, in the 2023 Legislative Session.

4. Concerned persons may submit their data, views, or arguments orally or in writing at a public hearing, they must make written request to: Genevieve Lighthiser, Montana State Library, 1201 11th Avenue, Helena, Montana, 59620; telephone (406) 444-3384; fax (406) 444-0266; TTY/TDD: (406) 444-4799; or email [glighthiser@mt.gov](mailto:glighthiser@mt.gov), and must be received no later than 5:00 p.m., June 7, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Genevieve Lighthiser at the above address no later than 5:00 p.m., June 7, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 8 members, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 53 persons based on the staff and board members of affected libraries.

7. The State Library 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 made to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the State Library.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by Jennie Stapp, State Librarian, on October 4, 2023.

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

/s/ Jennie Stapp  
Jennie Stapp  
Rule Reviewer

/s/ Robyn Scribner  
Robyn Scribner  
Commission Chair  
Montana State Library

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 18.8.202, 18.8.415, 18.8.1502, ) PROPOSED AMENDMENT  
18.8.1503, and 18.8.1505 pertaining )  
to Motor Carrier Services )

TO: All Concerned Persons

1. On May 31, 2024, at 10:00 a.m., the Department of Transportation (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules.

Please use the following link to join by Zoom:

<https://mt-gov.zoom.us/j/89204404674?pwd=NEh6SXI4K0NZUUxOUlFQcWhyU3JPQT09>

Meeting ID: 892 0440 4674

Password: 243876

2. The department 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 no later than 5:00 p.m. on May 24, 2024, to advise us of the nature of the accommodation that needed. Please contact Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-0806; fax (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail [astrong@mt.gov](mailto:astrong@mt.gov).

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

18.8.202 MOTOR CARRIERS OPERATING INTERSTATE (1) and (2) remain the same.

(3) By reference, the department adopts the rules established by the UCR Board in accordance with 49 USC 14504a (~~2009~~), a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 4639, Helena, MT 59620-4639.

(4) and (5) remain the same.

AUTH: 61-3-710, 61-10-155, MCA

IMP: 61-3-708, 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, MCA



REASON: The proposed revisions are necessary to correct citations to repealed references.

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) The quarter fee shall be one-fourth of the fee set forth in 61-10-201 ~~and 61-10-203~~, MCA, if the gross weight exceeds 24,000 pounds. For purposes of (1) through (4) ~~of this rule~~, a quarter shall be any consecutive three-month period.  
(2) through (6) remain the same.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, 61-10-209,  
MCA

REASON: The proposed revision is necessary to remove a reference to a repealed citation.

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375, 49 CFR parts 377 through 379, 49 CFR part 382, 49 CFR part 383, 49 CFR part 385, 49 CFR part 386 subpart F – Injunctions and Imminent Hazards, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~April 12, 2023~~ April 25, 2024. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at [www.gpo.gov](http://www.gpo.gov).

(2) remains the same.

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended, or repealed, by the Federal Motor Carrier Safety Administration between April 12, 2023 and April 25, 2024, thereby ensuring MDT's administrative rule associated with commercial vehicle safety substantially complies with the federal motor carrier safety regulations as listed in 61-10-154, MCA. The changes may be viewed at <https://bit.ly/4aymCQe>.

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS (1) A commercial motor vehicle, motor carrier, or hazardous materials shipper shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials: 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49

CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~April 12, 2023~~ April 25, 2024. Copies may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at [www.gpo.gov](http://www.gpo.gov).

AUTH: 61-10-155, MCA

IMP: 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended, or repealed, by the Federal Motor Carrier Safety Administration between April 12, 2023 and April 25, 2024, thereby ensuring MDT's administrative rule associated with transportation of hazardous materials substantially complies with the federal hazardous materials regulations as listed in 61-10-154, MCA.

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (April 1, 2023 2024), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or at [www.cvsa.org](http://www.cvsa.org).

(3) remains the same.

AUTH: 61-10-155, MCA

IMP: 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt the most current Commercial Vehicle Safety Alliance (CVSA) North American Uniform "Out-of-Service" criteria. The 2024 changes to the CVSA may be viewed at <https://www.cvsa.org/news/2024-oosc-handbook/>.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-0806; fax (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail [astrong@mt.gov](mailto:astrong@mt.gov), no later than June 7, 2024.

5. A representative of the department has been designated to preside over and conduct this hearing.

6. 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. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

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

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

10. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas  
Valerie A. Balukas  
Rule Reviewer

/s/ Christian Nygren  
Christian Nygren  
Chief Legal Counsel  
Department of Transportation

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.29.1401A, 24.29.1402,	)	PROPOSED AMENDMENT AND
24.29.1404, 24.29.1406, 24.29.1407,	)	REPEAL
24.29.1408, 24.29.1409, 24.29.1433,	)	
24.29.1534, 24.29.1538, and	)	
24.29.1616 and the repeal of ARM	)	
24.29.1415 and 24.29.1432 pertaining	)	
to workers' compensation	)	

TO: All Concerned Persons

1. On June 4, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/88376081707>  
Meeting ID: 883 7608 1707, Passcode: 569883

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 883 7608 1707, Passcode: 569883

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 28, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is necessity to substantially review and revise subchapter 14 of the workers' compensation rules to clarify, simplify, and increase usability of the rules. The proposed amendments eliminate duplication of statute, repeal inapplicable and invalid rules, and clarify departmental processes for all interested parties who use the workers' compensation rules. This rulemaking is in furtherance of Executive Order 1-2021 and efforts to reduce red tape in administrative rules. The proposed amendments also incorporate the statutorily required annual updates to the department's workers' compensation medical fee schedule, utilization and treatment guidelines, and prescription drug formulary.

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

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

- (1) through (9) remain the same.
- ~~(10) "Department" means the Montana Department of Labor and Industry.~~
- (11) through (20) remain the same but are renumbered (10) through (19).
- ~~(21) "Insurer" has the same meaning as provided by 39-71-116, MCA.~~
- (22) remains the same but is renumbered (20).
- ~~(23) "Maintenance care" has the same meaning as provided by 39-71-116, MCA.~~
- ~~(24) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" has the same meaning as provided by 39-71-116, MCA.~~
- (25) through (28) remain the same but are renumbered (21) through (24).
- ~~(29) "Palliative care" has the same meaning as provided by 39-71-116, MCA.~~
- (30) remains the same but is renumbered (25).
- ~~(31) "Primary medical services" has the same meaning as provided by 39-71-116, MCA.~~
- (32) through (35) remain the same but are renumbered (26) through (29).
- ~~(36) "Secondary medical services" has the same meaning as provided by 39-71-116, MCA.~~
- (37) and (38) remain the same but are renumbered (30) and (31).
- ~~(39) "Treating physician" means:~~
  - ~~(a) with respect to claims arising before July 1, 1993, the meaning provided by ARM 24.29.1511;~~
  - ~~(b) with respect to claims arising on or after July 1, 1993, the meaning provided by 39-71-116, MCA.~~
- (40) remains the same but is renumbered (32).

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-704, MCA

REASON: The proposed amendments striking sections (10), (21), (23), (24), (29), (31), (36), and (39)(b) are necessary because the definitions are duplicative of the statutory definitions in 39-71-116, MCA. Reasonable necessity exists to repeal the definition of "treating physician" in (39)(a) because the cross-reference to ARM 24.29.1511 is invalid as of that rule's repeal in 2019.

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) ~~As required by 39-71-704, MCA, charges submitted by providers must be the usual and customary charge billed for nonworkers' compensation patients.~~ Payment of medical claims must be made in accordance with the schedule of facility and professional medical fees adopted by the department.

(a) ~~For services provided on or after July 1, 2011, payment~~ Payment of medical claims must also be made in accordance with the utilization and treatment guidelines adopted by the department in ARM Title 24, chapter 29, subchapter 16.

(b) ~~For services provided on or after July 1, 2013, the~~ The department may assess a penalty on insurers for neglect or failure to use the correct fee schedule. It

is the insurer's responsibility to ensure that the correct fee schedule is used by a third-party agent.

~~(i) If the insurer does not properly process the entire medical bill using the correct fee schedule within 60 days of the receipt, the department may assess a \$200.00 penalty for each occurrence. Each medical bill is an occurrence.~~

~~(ii) This fine may be increased \$100.00 per subsequent occurrence up to a maximum of \$1,000.00.~~

~~(iii) The department will not assess any penalty unless the provider submits adequate documentation that they attempted to resolve the bill with the insurer. If the insurer does not correct the error, the provider may forward the billing, explanation of benefits, if any, and documentation of contact and responses to the department.~~

~~(iv) The insurer has the burden of proof to notify the department either by e-mail, facsimile, or letter that the bill(s) in question have been processed using the correct Montana fee schedule.~~

~~(v) The amounts collected from the insurer must be deposited with the department to be used in the Workers' Compensation Administration Fund.~~

~~(vi) An insurer may contest a penalty assessed pursuant to 39-71-107(5)(b), MCA, in a hearing conducted according to department rules. A party may appeal the final agency order to the Workers' Compensation Court. The court shall review the order pursuant to the requirements of 2-4-704, MCA.~~

~~(c) remains the same.~~

(2) The insurer shall make timely payments of all medical bills for which liability is accepted. For services provided on or after July 1, 2013, the department may assess a penalty on an insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill(s). The insurer must document receipt date of the bill(s) or the receipt date will be three days after the bill(s) was sent by the provider.

~~(a) If the insurer does not pay the undisputed portions of a medical bill within 60 days of receipt, the department may assess a \$200.00 penalty for each occurrence. Each medical bill is an occurrence.~~

~~(b) This fine may be increased \$100.00 per subsequent occurrence up to a maximum of \$1,000.00.~~

~~(c) The department will not assess any penalty unless the provider submits adequate documentation that they attempted to resolve the bill with the insurer. If the insurer does not pay the undisputed bill(s), the provider may forward the billing, explanation of benefits, if any, and documentation of contact and responses to the department.~~

~~(d) The insurer has the burden of proof to notify the department either by e-mail, facsimile, or letter that the bill(s) in question have been paid.~~

~~(e) The amounts collected from the insurer must be deposited with the department to be used in the Workers' Compensation Administration Fund.~~

~~(f) An insurer may contest a penalty assessed pursuant to 39-71-107(5)(c), MCA, in a hearing conducted according to department rules. A party may appeal the final agency order to the Workers' Compensation Court.~~

(3) For services provided on or after July 1, 2013, the provider may charge 1 percent per month simple interest for unpaid balances on an undisputed medical bill

on a claim pursuant to 39-71-704, MCA. The interest will start accruing on the 31st day after receipt of the bill by the insurer. The insurer must document receipt date of the bill or the receipt date will be three days after the bill was sent by the provider. If there is no payment within 30 days, the provider may bill the insurer 1 percent per month on the unpaid balance. For purposes of coding billed amounts, interest billing on unpaid charges, providers must bill the interest amount using the Montana unique code MT005 is established by this rule and must be used by the provider to bill the interest amount.

~~(4) For services provided on or after July 1, 2013, the insurer may charge a 1 percent per month simple interest for overpayment made to a provider pursuant to 39-71-704, MCA. The interest will start accruing on the 31st day after receipt by the provider of the reimbursement request. The provider must document the receipt date of the reimbursement request or the receipt date will be three days after the request was sent by the insurer. If there is no payment within 30 days of the provider's receipt of a reimbursement request or if the provider has not made alternative arrangements for repaying the overpayment within 30 days, the insurer may charge the provider 1 percent per month simple interest on the balance.~~

~~(5) and (6) remain the same but are renumbered (4) and (5).~~

~~(7) For claims arising before July 1, 1993, no fee or charge is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.~~

~~(8) and (9) remain the same but are renumbered (6) and (7).~~

~~(10) For injured workers who are receiving benefits from the Uninsured Employers' Fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.~~

AUTH: 39-71-203, MCA

IMP: 39-71-107, 39-71-203, 39-71-510, 39-71-704, MCA

REASON: The proposed amendment striking a portion of (1) is necessary because it duplicates 39-71-704(2)(a), MCA. Reasonable necessity exists to update the implementation statutes to clarify the authority for monetary penalties as set forth in this rule. Reasonable necessity exists to strike the penalty portions of (1) and (2) because, to the extent they are not duplicative of statute, they set forth business process which need not be stated in rule. Reasonable necessity exists to strike the majority of (3) and (4) because they are duplicative of 39-71-704(6)-(7), MCA. Reasonable necessity exists to strike (7) as it applies to date of injury before 1993, over 30 years ago. Reasonable necessity exists to strike (10) because it is not necessary to state in rule that statute supersedes rule.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) ~~After mediation, disputes between an insurer and a medical service provider arising over the amount of a fee for medical services are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker. The following issues are considered to be disputes arising over the amount of a fee for medical services:~~

~~(a) through (d) remain the same.~~

~~(2) All other disputes arising over medical claims, including travel expense reimbursement to injured workers, shall be brought before a department mediator as provided in part 24 of the Workers' Compensation Act.~~

(3) and (4) remain the same but are renumbered (2) and (3).

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-704, MCA

REASON: The proposed amendment striking a portion of (1) is necessary to align the rule with 39-71-704(10), MCA, which specifies that disputes between insurers and providers, after mediation, proceed directly to the Workers' Compensation Court for resolution, rather than through a departmental contested case hearing. Reasonable necessity exists to strike (2) because it is unnecessary to state in rule that disputes regarding benefits proceed through the normal course.

24.29.1406 FACILITY BILLS (1) remains the same.

~~(2) The providers and payers shall use, when possible, electronic billing for the billing and reimbursement process in order to facilitate rapid transmission of data, lessen the opportunity for errors, and lessen system costs.~~

~~(3) It is the responsibility of the facility to use the proper service codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.~~

~~(4) Except as provided in (3), insurers must make timely payments of facility bills. In cases where there is no dispute over liability for the condition, the insurer must, within 30 days of receipt of a facility's charges, pay the charges according to the rates established by these rules.~~

(5) remains the same but is renumbered (4).

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA

REASON: The proposed amendments striking portions of (2) and (3) are necessary because extra wording is not needed. Reasonable necessity exists to strike (4) because it duplicates 39-71-704(6)(a), MCA.

24.29.1407 PROSTHETIC APPLIANCES (1) remains the same.

~~(2) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591.~~

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The proposed amendment striking (2) is necessary because the Utilization and Treatment Guidelines requirements are listed in ARM 24.29.1611, and the guidelines do not direct payment of claims.



24.29.1408 SUSPENSION ALLOWED (1) An insurer may suspend compensation payments under 39-71-607, MCA, for not more than 30 days pending the receipt of medical information, if:

(a) the insurer submits to the department a detailed written statement indicating that the insurer is having difficulty in receiving medical information relating to a claimant's condition; and

(b) and (c) remain the same.

AUTH: 39-71-607, MCA

IMP: 39-71-607, MCA

REASON: The proposed amendment is necessary to simplify grammar.

24.29.1409 TRAVEL EXPENSE REIMBURSEMENT ~~(1) For claims arising before July 1, 1989, reimbursement for travel expenses shall be determined as follows:~~

~~(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider.~~

~~(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.~~

~~(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.~~

~~(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.~~

~~(e) Requests for travel reimbursement must be made within a reasonable time following the date(s) the travel was incurred.~~

~~(2) For claims arising during the period July 1, 1989, through June 30, 1993, reimbursement for travel expenses shall be determined as follows:~~

~~(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. When the travel coincides in whole or in part with the injured worker's regular travel to or from the worker's employment, the coincident mileage may be subtracted from the reimbursable mileage. For each calendar month, the first 50 miles of automobile mileage is not reimbursable.~~

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for reimbursement that are not submitted within 90 days may be denied by the insurer.

(3) For claims arising from July 1, 1993, through June 30, 2001, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to: change treating physician; attend an independent medical examination; use a preferred provider; or be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. For each calendar month, the first 50 miles of automobile mileage is not reimbursable. In addition, travel within the community in which the worker resides shall not be reimbursed.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for reimbursement that are not submitted within 90 days may be denied by the insurer.

(4) (1) For claims arising on or after July 1, 2001, payment Payment of travel expense is subject to the following:

~~(a) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for travel expense reimbursement that are not submitted within 90 days may be denied by the insurer. The insurer must notify the injured worker in writing that the request for travel expense reimbursement must be submitted within 90 days from the date the expense was incurred in order to be reimbursed. If the insurer fails to notify the claimant of the claimant's entitlement to travel expenses and 90 days have passed since the expense was incurred, the insurer must pay the travel.~~

(a) Claims for travel reimbursement must be submitted on a form provided by the insurer within 90 days of the date the expense was incurred. After 90 days, the insurer must make reimbursement, unless, during the 90 days that the reimbursement was available:

(i) the insurer has proof of providing written notice to the injured worker that travel reimbursement is available; and

(ii) the written notice stated that a travel reimbursement claim must be submitted to the insurer within 90 days of the worker incurring the expense.

(b) through (e) remain the same.

(f) Reimbursement for travel expenses shall be determined as follows:

(i) and (ii) remain the same.

(iii) Actual out-of-pocket receipted lodging expenses incurred by the claimant shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by ~~an original~~ a receipt from a licensed lodging facility. If the claimant ~~stays in a nonreceiptable facility, or~~ fails to obtain a receipt, the reimbursement is the amount set for state employees ~~for nonreceipted lodging.~~

(iv) remains the same.

(5) remains the same but is renumbered (2).

~~(6) For occupational disease claims arising prior to July 1, 2005, if liability has not been accepted on the claim and the department schedules a medical examination as provided in 39-72-602, MCA, the insurer shall reimburse the claimant for the travel expenses incurred for the examination pursuant to this rule.~~

~~(7) The department shall make available to interested parties the specific information referenced in this rule concerning rates for transportation, meals, and lodging; meal time ranges; and designations of high cost cities. The department shall inform interested parties in a timely manner of all applicable updates to this information.~~

AUTH: 39-71-203, ~~39-72-203, 39-72-402~~, MCA

IMP: 39-71-704, ~~39-72-602, 39-72-608~~, MCA

REASON: The proposed amendments striking (1), (2), and (3) are necessary because the sections address historical claims dating before July 1, 2001. The proposed amendments striking (6) is necessary because it addresses claims dating before July 1, 2005. It is not necessary to maintain this information in rule, and historical information regarding workers' compensation claims can be accessed by

contacting the department. The proposed amendment striking (7) is necessary because it is duplicative of the statute requiring the department to determine travel reimbursement rates in rule, 39-71-704(1), MCA, and the statute requiring the department to maintain and update interested parties' lists, 2-4-302(2)(b), MCA. Furthermore, (7) is not necessary because the department's website is consistently updated with current and accurate information. Reasonable necessity exists to shorten (4)(a) to condense and make travel reimbursement clearer. There is reasonable necessity to update the authorizing and implementing statutes because the cited statutes have been repealed.

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the fee schedules provided by this rule to determine the reimbursement for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the ~~Employment Relations Division~~ department's web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) through (c) remain the same.

(d) All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. ~~A copy of any instruction set for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~

(2) through (10) remain the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) remains the same.

(i) The base rate effective July 1, ~~2023~~ 2024, is ~~\$10,011~~ 10,141.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~

(b) through (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) remains the same.

(i) The base rate effective July 1, ~~2023~~ 2024, is \$130.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the base rates for services provided starting July 1, 2013, may be requested by email at~~

~~DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011  
Helena, MT 59604.~~

(b) remains the same.

(i) The base rate effective July 1, ~~2023~~ 2024, is \$98.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. ~~A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.~~

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The proposed amendments to (11)(a)(i) and (12)(a)(i) are necessary to incorporate the base rates for services as part of the annually updated medical fee schedules to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The proposed amendments to (1)(d), (11)(a)(ii), (12)(a)(ii), and (12)(b)(ii) remove unnecessary and repetitive references to the department's contact information, all of which is available online.

24.29.1534 PROFESSIONAL FEE SCHEDULE (1) An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the department's web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) and (b) remain the same.

(c) the Montana unique code, MT001, described in ~~(7)~~ (9);

(d) remains the same.

(e) the Montana unique code, MT009, for referral to a ~~CRC~~ vocational rehabilitation counselor for on-site job evaluation with the injured worker to assist in returning him/her to work either to his/her time of injury job or a new job/position.

(2) remains the same.

(3) The insurer shall pay 100 percent of the usual and customary charges for dental codes. The insurer shall pay a minimum of 75 percent of the usual and customary charges for dental codes D6010 through D6199.

(3) and (4) remain the same but are renumbered (4) and (5).

~~(5)~~ (6) Professionals, including those who furnish services in a hospital, critical access hospital, ambulatory surgery center, or other facility setting must bill insurers using the CMS 1500, with the exception of physical therapy, occupational therapy, and speech therapy services provided on an outpatient basis and billed on a UB04. Dental providers may bill insurers using the American Dental Association (ADA) Dental Claim Form.

(6) through (10) remain the same but are renumbered (7) through (11).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The proposed new (4) and proposed amendments to renumbered (7) are necessary to establish a Montana-specific dental fee schedule to maintain Montana's status quo for dental procedures; allow insurers and dental providers to negotiate fees; and clarify and simplify the processing of dental claims for all interested parties. According to data from the National Council on Compensation Insurance (NCCI), Montana's established dental rates in 2020 were lower than both the regional and countrywide averages for dental rates. NCCI 2020 data shows that Montana's dental rates were an average of \$207 lower than nine regional states' dental rates and an average of \$233 lower than countrywide dental rates. The department compared Montana's dental fee schedule amounts to the actual average amounts paid by workers' compensation insurers for dental services, and 70% of insurers paid more for dental services than the fee schedule amount in recent service years. Allowing providers to use the American Dental Association (ADA) Dental Claim Form will simplify and clarify workers' compensation billing for providers and insurers. Establishing a Montana-specific dental fee schedule and adopting use of the ADA Dental Claim Form are intended to simplify the processing of dental claims, and hopefully reduce delays and increase access to dental services for injured workers.

24.29.1538 CONVERSION FACTORS (1) The conversion factors established by the department for goods and services, other than anesthesia services are:

(a) \$60.47 on or after July 1, ~~2023~~ 2024.

(b) remains the same.

(2) The conversion factors established by the department for anesthesia services are:

(a) \$65.73 on or after July 1, ~~2023~~ 2024.

(b) and (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The proposed amendments to the conversion factors are necessary because the department must annually update the medical fee schedules adopted under 39-71-704(2), MCA. Although the amount of the conversion factors did not change between 2023 and 2024, it is necessary to update the effective date of the conversion factors to avoid confusion.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) remains the same.

(2) The department adopts and incorporates by reference its formulary as follows:

- (a) for prescriptions written on or after July 1, 2023 2024, the April 2023 2024 edition of the ODG Drug Formulary; and
- (b) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA  
IMP: 39-71-704, MCA

REASON: The proposed amendments are necessary because the department must annually update the commercial drug formulary adopted under 39-71-704(3)(b)(i) and (ii), MCA (2023). The automatic monthly update process is expressly provided for by 2-4-307(8), MCA.

- 5. The rules proposed to be repealed are as follows:

24.29.1415 IMPAIRMENT RATING DISPUTE PROCEDURE

AUTH: 39-71-203, MCA  
IMP: 39-71-711, MCA

REASON: The proposed repeal is necessary because the rule applies to injuries that occurred prior to 1991, which is over 30 years ago. Historical information regarding workers' compensation claims can be accessed by contacting the department.

24.29.1432 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED FROM DECEMBER 1, 2008 THROUGH JUNE 30, 2013

AUTH: 39-71-203, MCA  
IMP: 39-71-203, 39-71-704, MCA

REASON: The proposed repeal is necessary because the rule applies to injuries that occurred prior to 2013, and it is no longer necessary to address these specific rates in rule. Historical information regarding workers' compensation claims can be accessed by contacting the department.

- 6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., June 7, 2024.

- 7. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

- 8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 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 37.90.402, 37.90.403, ) PROPOSED AMENDMENT AND  
37.90.406, 37.90.408, 37.90.409, ) ADOPTION  
37.90.410, 37.90.412, 37.90.425, )  
37.90.433, 37.90.434, 37.90.439, and )  
37.90.449 and the adoption of NEW )  
RULES I and II pertaining to Mental )  
Health Medicaid Funded 1115 and )  
1915 Waivers

TO: All Concerned Persons

1. On June 3, 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 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/89388521515?pwd=UWVJUUnBnY1JNUmd0dWQzYkdFRmszZz09> meeting ID: 893 8852 1515, and password: 351760; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 893 8852 1515, and password: 351760. Find your local number: <https://mt.gov.zoom.us/j/89388521515?pwd=UWVJUUnBnY1JNUmd0dWQzYkdFRmszZz09>.

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 May 20, 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 or adopted provides as follows, new matter underlined, deleted matter interlined:

37.90.402 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS  
WITH SEVERE AND DISABLING MENTAL ILLNESS: THE PROVISION OF  
SERVICES (1) The services available through the waiver program are:

(a) adult day health, as ~~defined~~ described in ARM 37.90.430;

(b) behavioral intervention assistant, as ~~defined~~ described in ARM ~~37.90.436~~  
37.90.433;

(c) case management, as ~~defined~~ described in ARM 37.90.425;

(d) community transition services, as ~~defined~~ described in ARM 37.90.415;

- (e) consultative clinical and therapeutic services, as ~~defined~~ described in ARM 37.90.418;
- (f) environmental accessibility adaptations, as ~~defined~~ described in ARM ~~37.90.409~~ 37.90.414;
- (g) health and wellness, as ~~defined~~ described in ARM 37.90.417;
- (h) homemaker chore, as ~~defined~~ described in ARM ~~37.90.437~~ 37.90.419;
- (i) life coach, as ~~defined~~ described in ARM 37.90.434;
- (j) meals, as ~~defined~~ described in ARM ~~37.90.446~~ 37.90.426;
- (k) non-medical transportation, as ~~defined~~ described in ARM 37.90.450;
- (l) pain and symptom management, as ~~defined~~ described in ARM 37.90.416;
- (m) personal assistance service, as ~~defined~~ described in ARM 37.90.431;
- (n) personal emergency response system, as ~~defined~~ described in ARM 37.90.448;
- (o) private duty nursing, as ~~defined~~ described in ARM 37.90.447;
- (p) residential habilitation, as ~~defined~~ described in ARM ~~37.90.428~~, ~~37.90.429~~, ~~37.90.432~~, ~~37.90.460~~, and ~~37.90.461~~ 37.90.451, 37.90.452, 37.90.453, 37.90.454, and 37.90.455;
- (q) respite care, as ~~defined~~ described in ARM 37.90.438;
- (r) specialized medical equipment and supplies, as ~~defined~~ described in ARM 37.90.449; and
- (s) supported employment, as ~~defined~~ described in ARM ~~37.90.445~~ 37.90.435.

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

IMP: 53-6-402, MCA

37.90.403 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: DEFINITIONS (1) "Activities of daily living" (ADL) means basic personal everyday activities.

(2) "Applicant" means an individual requesting services but not enrolled in the SDMI program.

~~(2)~~(3) "Community First Choice" (CFC) and "Personal Assistance Service" (PAS) Programs (CFC/PAS) are Medicaid state plan programs designed to provide long term supportive care in a home setting. These programs are distinct from the PAS waiver service described in ARM 37.90.431.

(4) "Critical incident" is an incident that is serious in nature and poses a risk to the health, safety, or welfare of an enrolled member or others. It is a serious occurrence that includes abuse, neglect, and exploitation, each of which are defined under 52-3-803, MCA.

(5) "Enrolled member" means an individual enrolled in the SDMI program and authorized to receive services under the SDMI program.

(3) remains the same but is renumbered (6).

~~(4)~~(7) "Instrumental activities of daily living" (IADL) means household tasks which are limited to cleaning the area used by the member.

~~(5)~~(8) "Level of care assessment" (LOC) means a functional assessment used to determine if an individual requires the level of care normally provided in a nursing facility.

~~(6)~~(9) "Level of impairment assessment" (LOI) means an assessment used to identify areas in which a member requires long term services and supports.

~~(7)~~ "Member" means an individual who is Medicaid eligible.

~~(8)~~(10) "Mental health professional" means as defined has the meaning provided in 53-21-102, MCA.

~~(11)~~ "Non-critical incidents" are minor in nature and do not pose a risk to the health, safety, or welfare of an enrolled member or others.

~~(12)~~ "Person-centered recovery plan" (PCRP) is a written plan that identifies the supports and services that are necessary for the enrolled member to remain out of institutional level of care, allow the enrolled member to function at the enrolled member's maximum capacity, and enable the enrolled member to achieve personal goals toward recovery.

~~(9)~~(13) "Quality improvement organization" (QIO) means a group of health quality experts organized to improve the quality of care delivered to members the entity under contract with the department to complete agreed upon utilization review activities for Montana Medicaid services.

~~(10)~~ "Serious occurrence" means a significant event which affects the health, welfare, and safety of a member served in home and community-based services. The department has established a system of reporting and monitoring critical and non-critical incidents that involve members served by the program in order to identify, manage, and mitigate overall risk to the member. For information pertaining to reporting a serious occurrence, see the SDMI HCBS Policy #305, located at: <https://dphhs.mt.gov/amdd/HCBSPolicyManual>.

~~(11)~~(14) "Severe and disabling mental illness" is defined in ARM 37.90.409 "SDMI" is used in this subchapter to refer to severe and disabling mental illness, which is described in ARM 37.90.409.

~~(15)~~ "SDMI HCBS waiver program" is used in this subchapter to refer to severe and disabling mental illness home and community-based services waiver services.

AUTH: 52-3-803, 53-2-201, 53-6-402, MCA

IMP: 53-6-402, MCA

37.90.406 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PROVIDER REQUIREMENTS (1) The waiver program services may only be provided by a provider that:

(a) is enrolled as a Montana Medicaid provider except as provided in (2);

(b) remains the same.

(c) meets the criteria as a qualified provider authorized to deliver the service as specified in this subchapter. ~~the Provider Requirements Matrix for the SDMI HCBS waiver program. The department adopts and incorporates by reference the Provider Requirements Matrix for the SDMI HCBS waiver program, dated July 1, 2020, and located at: <https://dphhs.mt.gov/amdd/HCBSPolicyManual>.~~

(2) The department may authorize a SDMI HCBS contracted case management entity to issue pass-through payment for reimbursement of services rendered by a non-Medicaid provider for the following services:

(a) through (4) remain the same.

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

IMP: 53-6-402, MCA

37.90.408 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: REIMBURSEMENT

(1) through (3) remain the same.

(4) The SDMI HCBS waiver program will not reimburse for services provided to individuals of an enrolled member's household or family.

(5) All SDMI HCBS services, except for case management, must be prior authorized before delivery of services. Services that are delivered before prior authorization is received will not be approved and, if reimbursed, may be subject to repayment.

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

IMP: 53-6-402, MCA

37.90.409 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SEVERE AND DISABLING MENTAL ILLNESS DIAGNOSIS CRITERIA

(1) To qualify for the SDMI HCBS waiver program be found to have a qualifying SDMI diagnosis, a member an individual must:

(a) remains the same.

(b) have a minimum of three areas of high-level impairment indicated by a score of three or higher on the Behavioral Health and Developmental Disabilities (BHDD) Severe and Disabling Mental Illness, Home and Community-Based (HCBS) Waiver, Evaluation and Level of Impairment (LOI) form; and

(c) and (c)(i) remain the same.

(ii) diagnosed with one of the following diagnoses in ~~(2)~~, excluding mild or not otherwise specified-:

~~(2) The following qualify as a severe and disabling mental illness diagnosis:~~

~~(a)~~(A) Schizophrenia, paranoid type;

~~(b)~~(B) Schizophrenia, disorganized type;

~~(c)~~(C) Schizophrenia, catatonic type;

~~(d)~~(D) Schizophrenia, undifferentiated type;

~~(e)~~(E) Schizophrenia, residual type;

~~(f)~~(F) Delusional disorder;

~~(g)~~(G) Schizoaffective disorder;

~~(h)~~(H) Schizoaffective disorder, depressive type;

~~(i)~~(I) Bipolar I disorder, manic, moderate;

~~(j)~~(J) Bipolar I disorder, manic, severe without psychotic features;

~~(k)~~(K) Bipolar I disorder, manic, severe with psychotic features;

~~(l)~~(L) Bipolar I disorder, depressed, moderate;

~~(m)~~(M) Bipolar I disorder, depressed, severe without psychotic features;

~~(n)~~(N) Bipolar I disorder, depressed, severe with psychotic features;

~~(o)~~(O) Bipolar I disorder, mixed, moderate;

- ~~(p)~~(P) Bipolar I disorder, mixed, severe without psychotic features;
- ~~(q)~~(Q) Bipolar I disorder, severe with psychotic features;
- ~~(r)~~(R) Bipolar II disorder;
- ~~(s)~~(S) Major depressive disorder, single, moderate;
- ~~(t)~~(T) Major depressive disorder, single, severe without psychotic features;
- ~~(u)~~(U) Major depressive disorder, single, severe with psychotic features;
- ~~(v)~~(V) Major depressive disorder, recurrent, moderate;
- ~~(w)~~(W) Major depressive disorder, recurrent, severe without psychotic features;
- ~~(x)~~(X) Major depressive disorder, recurrent, severe with psychotic features;
- ~~(y)~~(Y) Post traumatic stress disorder, acute;
- ~~(z)~~(Z) Post traumatic stress disorder, chronic;
- ~~(aa)~~(AA) Generalized anxiety disorder; and
- ~~(ab)~~(AB) Borderline personality disorder.

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

IMP: 53-6-402, MCA

37.90.410 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: ELIGIBILITY AND SELECTION CONSIDERATION FOR PROGRAM ELIGIBILITY AND ENROLLMENT SELECTION

~~(1) A member~~ An applicant is ~~eligible~~ may be considered for enrollment in the program if the ~~member~~ applicant meets the following criteria:

- (a) and (b) remain the same.
- (c) ~~requires the level of care (LOC) of a nursing facility as determined by the Quality Improvement Organization under contract with the department;~~
- (d) ~~meets the severe and disabling mental illness criteria at in~~ ARM 37.90.409; and
- ~~(e) meets the level of impairment criteria established in the waiver program Evaluation and Level of Impairment (LOI) form, as determined by a licensed mental health professional, by scoring a three or higher on at least two areas.~~
- (e) meets the following additional criteria:
  - (i) the case management team determines that the applicant needs at least two SDMI HCBS waiver program services that can only be met through the SDMI HCBS waiver program. One of those services must be case management, and the SDMI HCBS waiver program service of meals cannot be counted as one of the two services; and
  - (ii) the case management team determines that the service providers necessary to deliver the services requested by the applicant are available at the time of enrollment.
- ~~(2) Once a member~~ When an applicant is found eligible to receive waiver program services, the ~~member is referred to the appropriate case management team. The case management team will:~~
  - (a) ~~offers the member~~ applicant an available opening for program services if ~~one~~ an opening is available; or

(b) places the ~~member~~ applicant on the wait list ~~for an available opening if an opening for program services is not available.~~

(3) ~~A member~~ If an applicant is placed on the wait list in accordance with (2)(b), the applicant will be placed on the SDMI HCBS waiver program wait list in the service areas the member applicant selects.

(4) The case management team must use the ~~member's~~ applicant's combined LOC and LOI scores to determine the ~~member's~~ applicant's score for relative placement on the SDMI HCBS waiver program wait list.

(5) If more than one ~~member~~ applicant has the same combined wait list score, then each ~~member~~ applicant is placed on the SDMI HCBS waiver program wait list based upon the ~~member's~~ applicant's wait list score as determined in (4), and thereafter in the order in which the applicant is placed on the SDMI HCBS waiver program wait list on a first come, first served basis.

(6) Placement on the SDMI HCBS waiver program wait list is not a guarantee an applicant will receive enrollment into the SDMI HCBS waiver program. Individuals qualified but not enrolled in another waiver program may be placed on the SDMI HCBS waiver program wait list. While on the SDMI HCBS waiver program wait list, the case management team will assist applicants in securing available non-waiver supports or services.

(7) The case management teams must review the SDMI HCBS waiver program wait list and update the SDMI HCBS waiver program wait list quarterly to ensure that individuals on the list continue to meet criteria for SDMI HCBS waiver program services. The review consists of verifying everyone's ongoing Medicaid eligibility, ongoing need for at least two SDMI HCBS waiver program services, and continued LOC and LOI criteria.

(8) An applicant must be removed from the wait list for the following reasons:

(a) the applicant's whereabouts are unknown, and the case management team has attempted to contact the applicant a minimum of twice per quarter for two consecutive quarters and no response has been received from the applicant;

(b) the case management team determines that the service providers necessary to deliver at least two SDMI HCBS waiver program services requested by the applicant are unavailable. The SDMI HCBS waiver program meals service does not count towards the two services;

(c) the applicant's needs cannot be met by the SDMI HCBS waiver program, as determined by the case management team;

(d) the applicant has reported he or she will not or cannot pay any Medicaid spend down;

(e) the applicant has moved out of state;

(f) the applicant requests to be removed from the wait list;

(g) the Office of Public Assistance has determined the applicant does not meet established financial and resource criteria; or

(h) the applicant's death is confirmed.

(9) An applicant must not remain on the wait list for more than six consecutive months. Exceptions may be made with prior approval from SDMI program staff.

~~(6)~~(10) The case management team must provide an enrolled member with written notice ten working days before termination of services due to a determination

of program ineligibility. An enrolled member may be removed from the SDMI HCBS waiver program for the following reasons:

(a) a determination by a mental health professional that the enrolled member no longer meets the eligibility SDMI diagnosis criteria set forth in ARM 37.90.409;

(b) the enrolled member ~~does not~~ fails to select and or does not actively participate in at least two services in the waiver program within ~~45~~ 30 calendar days from the date the enrolled member agrees to and signs the PCR. The service of meals cannot be counted as one of the two services;

(c) the department determines that the enrolled member has failed to utilize or to attempted attempt to utilize at least two waiver services, in ~~over 90~~ 30 days, with repeated attempts documented by the case management team to engage the enrolled member; ~~and~~

(d) the enrolled member no longer requires the level of care of a nursing facility as determined by the Quality Improvement Organization QOI under contract with the department;

(e) the case management team or program staff received written notification from the Office of Public Assistance confirming Medicaid ineligibility;

(f) insufficient SDMI HCBS waiver program funds;

(g) the enrolled member moved out of state;

(h) the enrolled member refuses to sign or participate in the completion of the PCR or quarterly review;

(i) the enrolled member's behavior creates serious risk to the member, caregivers, or others, or substantially impedes the delivery of services as established in the PCR;

(j) the enrolled member's death;

(k) the enrolled member's failure to use services as established in the PCR;

(l) the enrolled member's needs cannot be met through the SDMI HCBS waiver program;

(m) the enrolled member's written request to withdraw from the program;

(n) the health of the enrolled member deteriorates or in some manner places the enrolled member at serious risk of harm;

(o) the enrolled member is admitted to a nursing facility or hospital for a stay exceeding 30 days;

(p) the service providers necessary for the delivery of services are unavailable; or

(q) the services are no longer appropriate or effective in relation to the enrolled member's needs as determined by the case management team.

~~(7)~~(11) Eligibility for consideration for the waiver program does not entitle an individual to ~~for~~ selection and entry into the program.

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

IMP: 53-6-402, MCA

37.90.412 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PERSON-CENTERED RECOVERY PLAN (1) ~~A person-centered recovery Plan (PCR) is a written plan that identifies the supports and services that are necessary for the member to~~

~~remain out of institutional level of care, allow the member to function at the member's maximum capacity, and achieve personal goals towards recovery. The PCR~~  
PCRP is developed by the enrolled member and the case management team to meet the enrolled member's identified needs as well as cost of identified services.

(2) All services must be specifically authorized in writing in the enrolled member's PCR.

(3) Each PCR must be developed, reviewed, and revised by the CIO case management team. The case management team must:

(a) ~~initiate the development of the~~ develop an initial PCR upon the enrolled member's enrollment into the SDMI HCBS waiver program; which is the date the enrolled member begins receiving services under the SDMI HCBS waiver program;

(b) ensure the initial PCR includes all aspects of (5)(a) through (m) based on the LOC, LOI, and the information obtained by the case management team;

(c) initiate the strength assessment to determine the enrolled member's strengths, needs, preferences, goals, and desired outcomes, along with his/her health status and risk factors. The strength assessment must be initiated within 30 days of enrollment into the care management system;

(d) complete the strength assessment within three months of the enrolled member's enrollment into the program. Upon completion of the strength assessment, the PCR is finalized;

(b)(e) have monthly telephone contact with the enrolled member consisting of monthly monitoring calls;

(f) conduct in-person reviews of the PCR with the enrolled member every three months. Any issues with the PCR and the delivery and implementation of services are to be discussed at this time. The review is conducted at the enrolled member's place of residence, place of service, or other appropriate setting, as determined by the enrolled member's needs. This is an opportunity for case management teams to monitor the health and welfare of the enrolled member and evaluate the delivery of services to the enrolled member. This review includes evaluating and assessing strategies for meeting the needs, preferences, and goals of the enrolled member. It also includes evaluating and obtaining information concerning the enrolled member's satisfaction with the services, the effectiveness of services being provided, changes in the enrolled member's function, and cost effectiveness of the services.

(c)(g) ~~review the PCR quarterly with the member in the member's residence, place of service, or other appropriate setting, and update the PCR if there are~~ to reflect any changes to the information listed in (5)(a) through (j); and

(d)(h) complete an annual review of the PCR with the enrolled member and update the PCR if there are any changes to the information listed in (5)(a) through (j).

(4) The case management team must develop the PCR in consultation with:

(a) the enrolled member or the enrolled member's legal representative;

(b) the enrolled member's treating professional and other appropriate health care professionals; and

(c) others who have knowledge of the enrolled member's needs.

(5) The PCR must include:



- (a) the primary SDMI diagnosis and any other diagnosis of the enrolled member that are relevant to the services provided;
- (b) the enrolled member's symptoms, complaints, and complications indicating the need for services;
- (c) the enrolled member's strengths, areas of concern, goals, objectives, and required interventions;
- (d) the ~~SMDI~~ SDMI HCSB HCBS waiver program services that will be provided;
- (e) all other services the enrolled member requires including Montana Medicaid state plan services and community-based services and supports; ~~however~~ However, including non-program services in the PCRCP does not obligate the department to pay for the non-program services or ensure their delivery or quality;
- (f) a description of how each service addresses each of the enrolled member's functional needs outlined in the Severe and Disabling Mental Illness, Home and Community Based Services, Evaluation and Level of Impairment form;
- (g) through (j) remain the same.
- (k) the signature of the enrolled member or the enrolled member's legal representative which signifies the participation in and agreement of the PCRCP; and
- (l) the names and signatures of all individuals who participated in the development of the PCRCP which signifies the participation in and agreement of the PCRCP; and
- (m) the enrolled member's bill of rights that informs enrolled members they have the right to choose from the full range of services available in the waiver if appropriate and that services will be delivered by a qualified provider of the enrolled member's choice.
- (6) remains the same.
- (7) The case management team must retain all of the enrolled member's records in accordance with ARM 37.85.414.
- (8) The PCRCP must be approved by the department initially and then annually. The annual review must ensure compliance with this rule and federal guidance. If the initial PCRCP is found to meet program criteria, the department must approve the PCRCP within 30 days of enrollment into the care management system.
- (9) The department reviews all initial and annual PCRCP and at any time there is a change.
- (10) The PCRCP is subject to review by the department at any time.

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

IMP: 53-6-402, MCA

37.90.425 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CASE MANAGEMENT

- (1) Case management means case management as defined in at the Code of Federal Regulations (CFR) at 42 CFR 440.169(d)(e).
- (2) remains the same.
- (3) A case management team must consist of:
  - ~~(a) a registered nurse or a licensed practical nurse, with experience on a case management team serving members through a program of home and~~

~~community-based services for the elderly and persons with physical disabilities, or severe and disabling mental illness; and~~

~~(b)(a) a social worker case manager with a bachelor's degree level education in the field of human services; and and two consecutive years' experience providing case management services to adults with severe and disabling mental illness.~~

~~(b) a registered nurse, licensed practical nurse, licensed clinical social worker, or licensed clinical professional counselor to provide clinical supervision for every two case managers.~~

~~(4) Case management teams submit annual report cards to the SDMI HCBS waiver program staff as well as monthly utilization reports to ensure that quality assurance measures are met in accordance with performance measures.~~

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

IMP: 53-6-402, MCA

37.90.433 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: BEHAVIORAL INTERVENTION ASSISTANT

~~(1) Behavioral Intervention Assistant service is provided when the personal assistance services PAS available in the waiver and CFC/PAS provided in the state plan are insufficient in meeting the needs of the enrolled member due to challenging behaviors and assistance is required to improve or restore function in activities of daily living (ADLs), instrumental activities of daily living (IADLs), or social and adaptive skills.~~

~~(2) Behavioral intervention assistant service is provided by entities that are licensed and insured to deliver personal care services. If an enrolled member chooses to self-direct their services as a co-employer, the enrolled member must use an agency providing personal assistance, behavioral intervention assistance, or life coach type services, with the goal of ensuring the enrolled member is successful with the self-direction experience.~~

~~(3) Behavioral intervention assistants must have at least eight hours of specialized behavioral health training annually that is approved by the department.~~

~~(a) have at least eight hours of mental health training within six months of hire and annually thereafter, in order to develop and maintain specialized skills to address the challenging behaviors of enrolled members;~~

~~(b) be at least 18 years of age;~~

~~(c) receive training, within 30 days of hire in:~~

~~(i) abuse reporting;~~

~~(ii) incident reporting;~~

~~(iii) client confidentiality; and~~

~~(iv) any specialty training required or needed to sufficiently address the entire needs of the enrolled member, to provide whole person care;~~

~~(d) possess the ability to complete the documentation requirements of the program; and~~

~~(e) possess a valid driver's license and proof of auto liability insurance if transporting the enrolled member.~~

(4) Behavioral intervention assistants provide instructive assistance, cueing to prompt, and supervision, to assist the enrolled member in completion of ADLs, IADLs, and community integration activities.

(5) Behavioral intervention assistant services may not be provided concurrently with personal assistance services or supported employment services.

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

IMP: 53-6-402, MCA

37.90.434 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: LIFE COACH (1) Life coach focuses on social determinants of health (SDoH) that impact an enrolled member's overall health and well-being, and addresses the obstacles that impede an enrolled member's progress towards self-sufficiency, improved health, and well-being.

(2) Life coach services may be provided by:

(a) remains the same.

(b) ~~home health agencies~~ personal care entities; and

(c) other entities approved by the department; or

(d) a member self-directing the service, as described in ARM 37.90.439.

(3) remains the same.

(4) All life coach providers must complete and submit the designated application to the department.

(4)(5) An enrolled member must have a SDoH assessment with identified needs and established goals in their ~~person-centered recovery Plan~~ PCR.

(5) and (6) remain the same but are renumbered (6) and (7).

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

IMP: 53-6-402, MCA

37.90.439 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SELF-DIRECTED SERVICES (1) ~~Self-directed services may only be provided by an agency. Enrolled members in the waiver program must be offered an opportunity to utilize self-directed services as a co-employer. Once an enrolled member's comprehensive assessment and PCR process have been completed and needed waiver services are identified, the enrolled member may select the specific services they wish to self-direct from the list of services indicated in (10). The enrolled member may also receive some of the services in their PCR through traditional supports and services from a provider agency, as long as no services are duplicated. The entities responsible for supporting self-direction include case managers, the QIO, and the provider agencies.~~

(2) Services may be directed by:

(a) an enrolled member who has the capacity to self-direct, as determined by the department or the department's designee;

(b) a legal representative of the enrolled member, including a parent, spouse, or legal guardian; or

(c) a nonlegal representative freely chosen by the enrolled member or his/her the enrolled member's legal representative.

(3) The person directing the services must:

(a) and (b) remain the same.

(c) if acting in the capacity of a representative, demonstrate understanding of the enrolled member's needs and preferences.

(4) If an enrolled member indicates an interest in the self-directed option, the case management team is responsible for referring the enrolled member to the QIO. The QIO must assign a health care professional to:

(a) conduct a capacity interview over the telephone; and

(b) certify that the enrolled member, legal representative, or nonlegal personal representative is capable of managing the tasks and understands the risks involved. An approved capacity determination is required to self-direct services.

~~(4)~~(5) The case management teams must:

~~(a) refer member to the department's designee for a functional capacity evaluation; and~~

~~(b)~~(a) assist the enrolled member to develop an emergency backup plan, identifying and mitigating risks or potential risks, and monitor the health and safety of the enrolled member. Agency-based PAS managed by provider agencies under agreement with Medicaid are not available to enrolled members who are participating in the self-directed program. The use of PAS managed by provider agencies is permissible only if the enrolled member's backup plan fails;

(b) educate enrolled members regarding self-directed opportunities;

(c) meet with enrolled members to detail the self-directed service options during the intake process, annual visit, as well as throughout their service plan year as indicated through assessed need;

(d) provide assistance for informed decision-making by enrolled members and their families/representatives about the election of self-direction with information and training on the roles, risks, and responsibilities assumed by those who choose self-direction;

(e) inform enrolled members they are able to assist with the development of formal/informal supports, plan development, as well as available resources for self-direction; and

(f) oversee the service delivery in the self-direct option.

~~(5)~~(6) ~~Members~~ The enrolled member, the enrolled member's legal representative, or the nonlegal personal representative must:

(a) and (b) remain the same.

(c) understand the shared responsibility between the enrolled member and the provider agency.

~~(6)~~(7) Enrolled members will be able to choose from several agencies providing personal assistance type services, ensuring members are successful with the self-direction experience. The provider agency must:

(a) advise, train, and support the enrolled member, as identified in the enrolled member's Person-Centered Recovery Plan PCRP;

(b) remains the same.

(c) assist with monitoring the ~~monitor~~ health and welfare of the enrolled member.

- ~~(7)~~(8) Self-directed services can be terminated when:
- (a) the enrolled member chooses not to self-direct; or
  - (b) the case management team or the department identifies an instance where the self-directed option is not in the best interest of the enrolled member, ~~and~~ a corrective action does not improve the situation.
  - ~~(c) a corrective action does not improve the situation.~~
- ~~(8)~~(9) The enrolled member must be informed in writing of the plan to transfer to an agency-based service delivery.
- (10) The following services may be self-directed as a co-employer:
- (a) personal assistance services;
  - (b) behavioral intervention assistance; and
  - (c) life coach.

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

37.90.449 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES

- (1) Specialized medical equipment and supplies service is the provision of items of medical equipment and supplies to an enrolled member for the purpose of maintaining and improving the enrolled member's ability to reside at home and to function in the community.
- (2) Specialized medical equipment and supplies must:
- (a) be functionally necessary and relate specifically to the enrolled member's disability;
  - (b) substantively meet the enrolled member's needs for accessibility, independence, health, or safety;
  - (c) be likely to improve the enrolled member's functional ability or the ability of a caregiver or service provider to maintain the enrolled member in the enrolled member's home; and
  - (d) be the most cost-effective item that can meet the needs of the enrolled member.
- (3) Specialized medical equipment and supplies services ~~do~~ does not include:
- (a) and (b) remain the same.
  - (c) basic household furniture; ~~or~~
  - (d) educational items including computers, software, and books unless such items are purchased in conjunction with an environmental control unit; ~~or~~
  - (e) coverage for dentistry or dental-related procedures, services, equipment or supplies. This includes any 'D' procedure code definitions identified in the current American Medical Association's Common Procedural Terminology (CPT) manual or identified as dental pursuant to Medicare, the American Dental Association, and/or Montana Medicaid.
- ~~(4) A service animal is an animal trained to undertake particular tasks on behalf of a member that the member cannot perform and that are necessary to meet the member's needs for accessibility, independence, health, or safety. Specialized~~

medical equipment and supplies service includes service animals as defined in [NEW RULE II].

- ~~(5) A service animal does not include any of the following:~~
    - ~~(a) pets, companion animals, and social therapy animals;~~
    - ~~(b) guard dogs, rescue dogs, sled dogs, tracking dogs, or any other animal not specifically designated as a service animal; or~~
    - ~~(c) wild, exotic, or any other animals not specifically supplied by a training program on the approved provider list.~~
  - ~~(6) Supplies necessary for the performance of a service animal to meet the specific needs of the member are allowable expenses. Supplies do not include food to maintain the service animals.~~
  - ~~(7) Care necessary to the health and maintenance of a service animal include veterinarian care, transportation for veterinarian care, license, registration, and where the member or member's primary care giver is unable to perform it, grooming.~~
- (8) and (9) remain the same but are renumbered (5) and (6).

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

4. The rules proposed to be adopted provide as follows:

NEW RULE I HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PROVISION OF SERVICES BY LEGALLY RESPONSIBLE INDIVIDUALS (1) A legally responsible individual (LRI) is an enrolled member's spouse or a court-appointed guardian for the enrolled member.

- (2) The following services may be provided by a LRI:
  - (a) private duty nursing;
  - (b) personal assistance;
  - (c) non-medical transportation;
  - (d) respite; and
  - (e) behavioral intervention assistant.
- (3) In order for a LRI to receive payment for services, it has to be demonstrated that services provided meet the following criteria:
  - (a) be a service/support identified in the approved SDMI HCBS waiver program application;
  - (b) be necessary to avoid institutionalization;
  - (c) be a service or support that is specified in the enrolled member's PCRP;
  - (d) be provided by a LRI who meets the provider qualifications and training standards specified in the waiver for that service;
  - (e) be paid at a rate that does not exceed what is allowed by the department for the payment of similar services; and
  - (f) be extraordinary care, as provided in (4).
- (4) The CMT must assess the enrolled member's need for extraordinary care using the following criteria:

(a) the activity is one that exceeds the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the enrolled member and meet either (i) or (ii) as listed below:

(i) the enrolled member scores as severely or gravely impaired on the Behavioral Health and Developmental Disabilities (BHDD) Severe and Disabling Mental Illness (SDMI) Home and Community Based Services (HCBS) Waiver Evaluation and Level of Impairment (LOI) Form in Areas One, Two, or Seven; or

(ii) the enrolled member scores a 4 (total dependence) in the Activities of Daily Living/Instrumental Activities of Daily Living section on the Level of Care form.

(5) An enrolled member must be offered a choice of providers. If the enrolled member or the enrolled member's authorized representative chooses a relative or legal guardian as a care provider, the choice must be documented on the PCR. In addition to case management, monitoring, and reporting activities required for all waiver services, the following requirements are applied when a relative or legal guardian is paid as a care provider:

(a) quarterly face-to-face reviews with the enrolled member of expenditures, and the enrolled member's health, safety, and welfare status;

(b) monthly reviews by the provider agency of hours billed for relative provided care;

(c) a relative or legal guardian who is an enrolled member's authorized representative may not also be paid to provide services; and

(d) an enrolled member's spouse employed by a personal care agency may not be reimbursed directly to provide personal care to the enrolled member.

(6) A relative or legal guardian may not provide more than 40 hours of paid time in a seven-day period.

(7) The CMT checks in with the LRI to see if there are concerns regarding the risk factors. A back-up plan is part of the PCR plan that would provide relief to the caregiver in the event they are at risk.

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

IMP: 53-6-402, MCA

NEW RULE II HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES – SERVICE ANIMALS

(1) A service animal is an animal trained to undertake a particular task or tasks on behalf of an enrolled member that the enrolled member cannot perform and that are necessary to meet the enrolled member's needs for accessibility, independence, health, or safety. A service animal is limited to a dog trained to perform a task or tasks directly related to the enrolled member's disability.

(2) The following requirements must be met prior to the department approving and paying for a service animal:

(a) the enrolled member must be evaluated by a physician to determine if the member would benefit from a service animal in maintaining and improving the enrolled member's ability to reside at home and to function in the community;

(b) the evaluating physician must provide a recommendation for a service animal for the enrolled member and must identify the work or task the service animal will perform for the enrolled member and whether and how the work or task relates to the enrolled member's SDMI;

(c) the work or task performed by the service animal must relate to the enrolled member's SDMI as defined in ARM 37.90.403; and

(d) the enrolled member's case management team must determine that a service animal is a practical means of meeting the enrolled member's need and that there exists no alternative method of meeting the enrolled member's need that is significantly less expensive than a service animal.

(3) A service animal does not include any of the following:

(a) pets, companion animals, emotional support animals, and therapy animals;

(b) guard dogs, rescue dogs, sled dogs, tracking dogs, or any other animal not specifically designated as a service animal; or

(c) wild, exotic, or any other animals not specifically designated as a service animal.

(4) The following expenses will be covered by the program:

(a) supplies necessary for the service animal to perform work or tasks for the enrolled member;

(b) veterinary care, transportation to veterinary care, licensing or registering of service animal, and grooming if the enrolled member or the enrolled member's primary care giver is unable to groom the service animal;

(c) training of service animal to undertake the particular tasks on behalf of an enrolled member as long as a qualified trainer has assessed the service animal and determined the animal to have the behavioral characteristics to successfully complete training.

(5) The program does not pay for food for the service animal.

(6) The department may require a consultation prior to the purchase of certain equipment and supplies.

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

IMP: 53-6-402, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.409, 37.90.410, 37.90.412, 37.90.425, 37.90.433, 37.90.434, 37.90.439, and 37.90.449, and is proposing to adopt NEW RULES I and II.

The 1915(c) Home and Community Based Severe and Disabling Mental Illness (SDMI) waiver offered several flexibilities during the COVID-19 public health emergency (PHE) through the Appendix K authority. With the expiration of the COVID-19 public health emergency, the department submitted to the Centers for Medicare & Medicaid Services (CMS) an application for amendment to its base



1915(c) waiver to make selected Appendix K flexibilities permanent. CMS has now approved these amendments to the 1915(c) waiver.

The changes are as follows:

- Add a self-direct service option to behavioral intervention assistant and life coach.
- Add conflict-free case management criteria to the base waiver.
- Update the SDMI waiver's case management team requirements.

This rulemaking is necessary to align the department's administrative rules with the base waiver and to reflect the changes made to the base waiver. The amendment to the 1915(c) waiver was effective October 1, 2023, so these rules are proposed to be effective retroactively to October 1, 2023.

#### ARM 37.90.402

This rule would be amended to update citations to administrative rules to ensure accuracy of this rule. The updated citations also reflect changes proposed within this rule notice.

#### ARM 37.90.403

This rule would be amended to reflect the correct hyperlink to the SDMI provider manual. It would also add definitions for "applicant," "critical incident," "enrolled member," and "non-critical incident." Defining these terms will provide clarity to these rules and avoid unnecessary repetition. The terms "member" and "serious occasion" would be replaced with "enrolled member" and "critical incident," respectively.

#### ARM 37.90.406

This rule would be amended to reflect the correct hyperlink to the SDMI provider manual.

#### ARM 37.90.408

This rule would be amended to clarify that waiver services would be prior authorized. The department would require prior authorization to ensure medical necessity for a waiver service.

#### ARM 37.90.409

This rule would be amended to indicate the qualifying diagnoses for the waiver service eligibility. It would remove language that suggests diagnosis guarantees enrollment in the waiver.

#### ARM 37.90.410

This rule would be amended to delineate the criteria for consideration for program eligibility and enrollment selection. The changes are proposed to ensure the criteria align with the waiver approved by CMS.

ARM 37.90.412

This rule would be amended to add person-centered recovery plan requirements to delineate the roles and responsibilities of both the case management team and the department. The changes are proposed to ensure the rule aligns with the waiver approved by CMS.

ARM 37.90.425

This rule would be amended to update the staffing requirements for case management teams.

ARM 37.90.433

This rule would be amended to add a self-direct option for behavioral intervention assistant services and to include requirements for staff delivering the service. Including the self-direct option for this service would promote personal choice for enrolled members.

ARM 37.90.434

This rule would be amended to add a self-direct option for life coach services. Including the self-direct option for this service would promote personal choice for enrolled members.

ARM 37.90.439

This rule would be amended to clarify self-directed services and align requirements with the approved waiver. This proposed change is in response to CMS's request that the department better define self-directed services and clarify the requirements around self-directed services.

ARM 37.90.449

This rule would be amended to clarify allowable specialized medical equipment and supplies. It would also remove service animal language, which instead would be found in NEW RULE II.

NEW RULE I

This rule would be added to describe requirements for the provision of waiver services by a legally responsible person and to permit that person to receive Medicaid reimbursement for providing the service.

NEW RULE II

This rule would be added to describe requirements for reimbursement related to service animals under the approved waiver. The new rule would provide explicit direction on how an enrolled member may qualify for a service animal and what costs would be covered by the waiver program. Using as a guide the Americans with Disabilities Act (ADA) and federal regulations that implement the ADA, the department proposes to limit service animals to dogs trained to perform a task directly related to an enrolled member's disability. The rule would not permit reimbursement for a service animal other than a dog trained to perform a task directly related to the enrolled member's disability.

### Fiscal Impact

This proposed rulemaking does not have a fiscal impact.

6. The department intends these amendments and adoptions to be retroactively effective October 1, 2023.

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., June 7, 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. Such written request may be mailed or delivered to the contact person in 7 above.

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 of the above-referenced 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 April 30, 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 37.99.102, 37.99.115,	)	PROPOSED AMENDMENT
37.99.118, 37.99.119, 37.99.125,	)	
37.99.127, 37.99.132, 37.99.172, and	)	
37.99.216 pertaining to Private	)	
Alternative Adolescent Residential	)	
Programs	)	

TO: All Concerned Persons

1. On June 4, 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 amendment 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/82279369511?pwd=aGJJNnFqNE4vUGNXMkR6bHFvTUlxZz09>, meeting ID: 822 7936 9511, and password: 800205; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 822 7936 9511, and password: 800205. Find your local number: <https://mt-gov.zoom.us/u/kenTY4OvIW>.

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 May 21, 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 provide as follows, new matter underlined, deleted matter interlined:

37.99.102 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) "Adolescent" means any person between the ages of 10 and 19 years who is placed in a program by a parent/legal guardian. A program participant may be up to the age of 20 if they are enrolled in an accredited secondary school.

(a) Upon admission to the program, the adolescent is considered a program participant.

(b) The adolescent may remain as a program participant up to the age of 20 if they are enrolled in an accredited secondary school.

(2) remains the same.

(3) "Chemical restraint" means the use of a drug or medication that is used to control behavior or restrict the program participant's freedom of movement, and which is not a standard treatment for the program participant's medical or psychiatric condition. ~~The use of chemical restraint is prohibited in all programs.~~

(4) through (9) remain the same.

(10) "Licensure bureau" means the Office of Inspector General Quality Assurance Licensure Bureau.

(11) "Mechanical restraint" means the use of devices as a means of restricting a person's freedom of movement. ~~The use of mechanical restraint is prohibited in all programs.~~

(12) "Mental health professional" ~~means a person must be~~ licensed pursuant to Title 37, chapters 22, 23, or ~~and~~ 37, MCA, as a clinical professional, social worker, or marriage and family therapist. ~~A program may use a licensure candidate to provide mental health professional services with written consent of the program participant's parent/legal guardian.~~

(13) and (14) remain the same.

(15) "Personal property search" means a search which includes ~~but is not limited to~~ going through a program participant's personal property and/or room including closet, bed, desk, dresser drawers, backpacks, etc., with the intention of looking for contraband.

(16) remains the same.

(17) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of the free movement of an individual's arms, legs, or head. Such term does not include physical escort. ~~Physical restraint may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others, when less restrictive interventions have been determined to be ineffective.~~

(18) remains the same.

(19) "Seclusion" means a behavior control technique involving locked isolation in which the ~~resident~~ program participant is physically prevented from leaving. Such term does not include time-out. ~~Seclusion is prohibited in all programs.~~

(20) "Self-administration assistance" means providing necessary assistance to any program participant in taking their medication, including:

(a) through (c) remains the same.

(d) opening the lid of the above container for the ~~resident~~ program participant;

(e) through (g) remains the same.

(21) "Serious incident" means suicide attempt, ~~use of excessive physical force by staff~~ use of a restraint or seclusion, physical or sexual assault of a program participant by staff, or ~~other resident~~ another program participant, injury to a program participant which requires emergency medical care, known, or suspected abuse or neglect (as defined in 41-3-102, MCA), of a program participant by staff or ~~other resident~~ another program participant, a near miss or the death of a program participant, elopement, or an incident that involves law enforcement.

(22) "Time-out" means the restriction of a program participant for a period of time to a designated unlocked area from which the ~~resident~~ program participant is

not physically prevented from leaving for the purpose of providing the program participant the opportunity to regain self-control.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-802, 52-2-803, 52-2-805 MCA

37.99.115 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN POLICY AND PROCEDURE (1) remains the same.

(2) The policy and procedure manual must be submitted with the initial application for department approval.

(3) Any updates to the policy and procedure manual must be submitted to the department for approval 30 days prior to implementing the policy.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.118 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN AGREEMENT (1) through (1)(d) remain the same.

(e) a statement describing the communication policy, which must include a minimum of one ~~telephone~~ confidential video communication contact per week between the youth and the youth's parents/legal guardian or foster parent(s), in addition to any therapeutic contact (family therapy);

(f) through (3) remain the same.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.119 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DISCHARGE (1) and (2) remain the same.

(3) The discharge report must be maintained by the program in the participant's file and a copy must be provided to the parent/legal guardian at the time of discharge. Written documentation that the discharge report was provided to the parent/legal guardian must be maintained in the ~~resident's~~ program participant's file.

(4) remains the same.

(5) Unless otherwise prohibited by law or court order, a program must allow a parent or legal guardian to remove a youth from the program at any time.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.125 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RIGHTS AND GRIEVANCES (1) The program must have a written program participant rights policy that supports and protects the fundamental human, civil, constitutional, and statutory rights of all program participants. These rights must include:

(a) remains the same.

(b) freedom from abuse, neglect, exploitation, harassment, and unnecessary physical restraint;

(c) through (k) remain the same.

(l) to submit complaints and ~~grieve~~ alleged violations of these rules, including a prohibition on retaliation against a program participant for submitting such a complaint;

(m) and (n) remain the same.

(2) A program is prohibited from:

(a) using physical discipline or the threat of physical discipline as a punishment, deterrent, or incentive;

(b) unlawfully depriving a program participant of a basic necessity or a fundamental right, including education;

(c) admitting a program participant who is under the age approved on the license or has a condition that the program is not authorized to treat pursuant to the program's admission policy;

(d) using medical, chemical, or mechanical restraints;

(e) using physical restraints, except in emergency circumstances to ensure the immediate physical safety of the program participant, a staff member, or others, when less restrictive interventions have been determined to be ineffective;

(f) using a licensure candidate to provide mental health professional services if the parent/legal guardian of a program participant has not provided written consent;

(g) using seclusion; and

(h) sexually abusing, exploiting, or harassing a program participant.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.127 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS (1) A program must require each ~~applicant~~ program participant, person associated with the program, and staff member to read and sign a statement that clearly defines child abuse and neglect and outlines the individual's responsibility to report all known or suspected incidents of child abuse or neglect of any program participant to the department within 24 hours.

(2) through (3)(a) remain the same.

(b) a procedure for developing a safety plan approved by the department which protects the program participants and staff until the investigation is complete; ~~and~~

(c) a procedure for taking appropriate disciplinary measures against any staff member involved in an incident of child abuse or neglect, including termination, retraining, or any other action geared towards the prevention of future incidents; and

(d) a procedure for reporting all serious incidents to the parent/legal guardian within 24 hours of the incident.



(4) Any serious incident involving a program participant must be reported in writing ~~the next within one business day to the parent/legal guardian and to the~~ department's licensure bureau. The report must include:

- (a) and (b) remain the same.
- (c) a description of the incident and the circumstances surrounding it; ~~and~~
- (d) a statement written by the staff member that was involved in the incident or witnessed the incident; ~~and~~
- (e) documentation of the date and time the incident was reported to the parent/legal guardian.
- (5) and (6) remain the same.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-5-805, 52-2-809, MCA

37.99.132 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL ENVIRONMENT (1) through (7)(a) remain the same.

- (b) one bathing facility for every eight ~~residents~~ program participants.
- (8) through (12) remain the same.
- (13) Programs must post a sign within the facility that is accessible to all program participants and to the public. The sign must provide information on what agency should be contacted to report a violation of law or policy and must include contact information for the Office of Inspector General Licensure Bureau, the Montana Child Abuse and Neglect Hotline (866-820-5437), and local law enforcement.
- (13) remains the same but is renumbered (14).

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, 52-2-810, MCA

37.99.172 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: USE OF CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES (1) remains the same.

- (2) The crisis intervention and physical restraint policies and procedures must include:
  - (a) suicide prevention training for all staff to include risk identification, screening and assessment, indicated interventions, safety planning, treatment, follow-up care, and documentation;
  - (a) through (f) remain the same but are renumbered (b) through (g).
  - (3) remains the same.
  - (4) The documentation required in (3) must be submitted in writing to the Office of Inspector General Licensure Bureau within one business day of the physical restraint.
  - (4) and (5) remain the same but are renumbered (5) and (6).

AUTH: 52-2-803, 52-2-805, MCA

IMP 52-2-803, 52-2-805, 52-2-809, MCA

37.99.216 PRIVATE OUTDOOR PROGRAMS: EXPEDITION:  
NUTRITIONAL REQUIREMENTS (1) and (2) remain the same.

(3) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each ~~resident~~ program participant.

(4) through (7) remain the same.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend the administrative rules pertaining to Private Alternative Adolescent Residential and Outdoor Programs pursuant to House Bill 218, signed into law on May 17, 2023, which amended 52-2-805 and 52-2-810, MCA. The law requires additional licensing requirements regarding a program's policies and procedures, reporting of restraints utilized by the program, suicide prevention, procedures for submitting complaints to the department and law enforcement, program participant rights, discharging youth to parents, and weekly unmonitored communication with parent or guardian. The department proposes to amend ARM 37.99.102, 37.99.115, 37.99.118, 37.99.119, 37.99.125, 37.99.127, 37.99.132, and 37.99.172 to implement the above requirements.

37.99.102

The department proposes amendments to certain definitions, to remove prohibited practices from the definitions. The prohibited practices would be moved to ARM 37.99.125, where all prohibited practices would be set forth and to update the language of the rule to reflect changes to 52-2-805, MCA, in the 2023 Legislative session implementing reporting requirements for the use of medical, chemical, or physical restraint or seclusion. These amendments are proposed to update the language of the rule to be consistent with the reference to "program participant" versus "resident."

37.99.115

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(c), MCA, added by the 2023 Legislature, to ensure program policies and procedures follow all standards in Administrative Rules of Montana and Montana Code Annotated, by requiring the department to review and approve the policy and procedure manuals of all licensed programs.

37.99.118

These amendments are proposed to update the language of the rule to reflect 52-2-805(4)(b), MCA, added by the 2023 Legislature, requiring one unmonitored video conference call per week between the youth and the youth's parent/legal guardians or foster parents.

37.99.119

These amendments are proposed to update the language of the rule to reflect 52-2-805(4)(a), MCA, added by the 2023 Legislature, to clarify that parents/legal guardians are allowed to remove the youth from the program at any time.

37.99.125

The department proposes the amendments to this rule to implement 52-2-805(3), MCA, added by the 2023 Legislature, which identifies practices prohibited to licensed programs.

37.99.127

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(a), MCA, added by the 2023 Legislature, to clarify and implement the requirement for the use of restraints or seclusion to be reported the department within one business day. The department also proposes an amendment to implement 52-2-810(2)(d), MCA, added by the 2023 Legislature, to require that licensed programs make their records available for inspection by the department at all reasonable times.

37.99.132

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(d) and (5), MCA, added by the 2023 Legislature, ensuring youth, parents/guardians, and the public are advised of the department contact information for filing a complaint.

37.99.172

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(a) and (2)(b), MCA, added by the 2023 Legislature, ensuring all staff (1) receive suicide prevention training and (2) report all physical restraint to the department within one business day.

37.99.216

This amendment is proposed to update the language of the rule to be consistent with the reference to "program participant" versus "resident."

Fiscal Impact

The proposed rule amendments have no anticipated fiscal impact implications on providers.

5. 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., June 7, 2024.

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

7. 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. Such written request may be mailed or delivered to the contact person in 5 above.

8. 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>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on August 31, 2023, and had the opportunity to meet with program staff to discuss proposed rule changes to implement HB 218.

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

/s/ Greg Henderson

Greg Henderson  
Rule Reviewer

/s/ Charles T. Brereton

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

Certified to the Secretary of State April 30, 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 37.79.201, 37.82.102, ) PROPOSED AMENDMENT  
37.82.701, 37.86.202, 37.86.3402, )  
and 37.86.3405 pertaining to 12- )  
month postpartum continuous )  
eligibility for Medicaid and HMK )

TO: All Concerned Persons

1. On May 30, 2024, at 3:00 p.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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81310377867?pwd=cmxcXErUXA5QTlZUWJlZmpDam5XQT09>, meeting ID: 813 1037 7867, and password: 685914; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 813 1037 7867, and password: 685914. Find your local number: <https://mt-gov.zoom.us/u/kbkCipraF>.

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 May 16, 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 provide as follows, new matter underlined, deleted matter interlined:

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under the HMK coverage group if:

(a) the applicant is under 19 years of age, unless the applicant qualifies for postpartum continuous eligibility coverage as defined in ARM 37.82.102;

(b) remains the same.

(c) the family of which the applicant is a member has annual family income, without regard to other family resources, at or below ~~250%~~ 261% of the federal poverty level (FPL);

(d) through (g) remain the same.

(h) ~~for three months prior to enrollment the applicant has not had creditable private health insurance coverage. This requirement is waived if the parent or~~

guardian providing the insurance: the applicant does not have other creditable health insurance.

- ~~(i) dies;~~
- ~~(ii) is terminated or laid off;~~
- ~~(iii) can no longer work due to a disability;~~
- ~~(iv) has a lapse in insurance coverage due to new employment;~~
- ~~(v) had insurance coverage that ended because the stepparent, who provided the coverage, and the parent divorced;~~
- ~~(vi) had coverage through the Insure Montana Program;~~
- ~~(vii) had coverage through the Medicaid Health Insurance Premium Payment (HIPP) program;~~
- ~~(viii) paid more than 50% of the insurance premium;~~
- ~~(ix) has insurance coverage that is not accessible (e.g. coverage is through an HMO in another state);~~
- ~~(x) loses Tricare military health insurance; or~~
- ~~(xi) has an annual aggregate amount of health insurance premiums and cost sharing expenses imposed for coverage of the family of a child which exceeds 5% of the family's income.~~

~~(2) State of Montana and Montana University System employees'; children may be eligible for the HMK coverage group under the following conditions: the family meets HMK income guidelines and the health insurance premiums and cost-sharing expenses exceed 5% of the family's income for the benefit year.~~

~~(3) through (5) remain the same but are renumbered (2) through (4).~~

~~(a) Family income may include one or more of the following:~~

~~(i) remains the same.~~

~~(ii) the income of the parent with whom the child resides the majority of the year, including any child support received for the child, if the child resides with one parent in a single parent household;~~

~~(A)(iii) if the parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the parent with whom the child resides the majority of the year;~~

~~(B)(iv) the income of individuals siblings under the age of 19 who live in the household but do not attend school is imputed to the parent with whom the child resides the majority of the year.~~

~~(b) Family income does not include:~~

~~(i) money received from assets drawn down such as withdrawals from a savings account, an annuity, or from the sale of a house or a car;~~

~~(ii) gifts under the federal annual exclusion, loans, one-time insurance payments, or lump sum compensation for an injury;~~

~~(iii) and (iv) remain the same.~~

~~(v) the interest earned on (5)(4)(b)(iii) and (iv);~~

~~(vi) earned income which is excluded and dependent care expenses which are deducted from income under the HMK Plus coverage group;~~

~~(vii) income excluded under federal Medicaid regulations;~~

~~(viii)(vi) foster care income for any children unless the only children in the family are in foster care; or~~

~~(ix)(vii)~~ income of an individual with whom a child resides who has no legal obligation to support the child and does not claim the child as a dependent.

~~(c) Income information will be used by the department to project the family's income.~~

~~(d) The family's debts, medical expenses, or other financial circumstances will not be taken into consideration when determining family income.~~

(6) remains the same but is renumbered (5).

~~(7)(6)~~ Applicants who are losing HMK Plus coverage or who were denied HMK Plus coverage for a reason other than that the family withdrew their application or failed to comply with HMK Plus requirements are evaluated for HMK coverage group via an electronic report. The HMK coverage group eligibility will be determined and applicants will be enrolled in the HMK coverage group or placed on the HMK coverage group's waiting list.

(8) through (12) remain the same but are renumbered (7) through (11).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.82.102 MEDICAL ASSISTANCE, DEFINITIONS (1) through (23) remain the same.

(24) "Postpartum continuous eligibility coverage" means members who are currently enrolled in Healthy Montana Kids (HMK) or Medicaid may receive 12 months of continuous postpartum coverage, regardless of any changes in circumstances. The 12-month postpartum period begins on the last day of a member's pregnancy and extends through the end of the month in which the 12-month period ends.

(24) through (35) remain the same but are renumbered (25) through (36).

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

IMP: 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) through (f) remain the same.

(g) A pregnant woman who becomes ineligible for Medicaid due solely to increased income and whose countable resources do not exceed \$3,000 and whose pregnancy is disclosed to the department ~~and verified~~ prior to the effective date of Medicaid closure. This coverage group is known as the "continuous pregnant woman group." Eligibility shall be continuous without lapse in Medicaid eligibility from the prior Medicaid eligibility and shall terminate on the last day of the month in which the 12-month postpartum period ends. ~~which the 60th postpartum day occurs.~~

(h) through (k) remain the same.

(l) A child through the month of the child's 19th birthday, who lives in a household whose income exceeds the categorically needy standards and resources do not exceed the ~~medically-needy income and resource standards~~ specified in ARM 37.82.1106, 37.82.1107, and 37.82.1110, ~~provided that the child does not live with a~~

~~parent or specified caretaker relative as defined in the family-related Medicaid Manual, section 201-4.~~ This coverage group is known as the "child-family medically needy group."

(m) through (o) remain the same.

(2) Medicaid will continue until the last day of the month in which ~~the 60th postpartum day falls~~ the 12-month postpartum period ends for pregnant women as long as the pregnant woman was eligible for and receiving Medicaid on the date pregnancy ends.

(3) remains the same.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA

IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

37.86.202 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS For the purpose of these rules, the following definitions will apply:

(1) through (11) remain the same.

(12) "Postpartum services" means services rendered to a woman during the ~~60-day~~ 12-month postpartum period following the delivery for any health conditions or complications that are pregnancy-related.

(13) through (16) remain the same.

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

IMP: 53-6-101, MCA

37.86.3402 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, ELIGIBILITY (1) through (3) remain the same.

(4) Targeted case management services may be delivered to the member, if Medicaid eligibility continues, until the last day of the month in which the 12-month postpartum period occurs ~~the 60th day following delivery ends the end of the pregnancy.~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.86.3405 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, COVERAGE (1) and (2) remain the same.

(3) Two post-partum reassessments must occur after delivery and prior to the last day of the month in which the ~~60th day~~ 12-month postpartum period following delivery ends ~~occurs.~~

(4) remains the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY



The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.201, 37.82.102, 37.82.701, 37.86.202, 37.86.3402, and 37.86.3405.

The proposed amendments are needed to update rule language to extend Medicaid coverage to postpartum women who are enrolled in Montana's Medicaid and HMK/CHIP programs during pregnancy. The department received approval from the Centers for Medicare & Medicaid Services (CMS) for State Plan Amendments to increase continuous eligibility for postpartum women in Medicaid and HMK/CHIP from 60 days to 12 months after the last day of pregnancy. The rule amendments are necessary to align rule language with the CMS-approved State Plan Amendments.

ARM 37.79.201 Proposed changes would update the age limit language of "19 or under" to ensure members over the age of 19 who are eligible for postpartum coverage can continue to receive HMK coverage. Additionally, the department proposes to remove the three-month wait for HMK for those who previously had other health coverage. Changes are also proposed to reflect current eligibility processes, including considering income when determining eligibility for State of Montana and Montana University employees and not calculating a family's out-of-pocket health care costs, as was previous practice.

ARM 37.82.102 The department proposes to add a definition for "postpartum continuous eligibility coverage," to provide clarity to who qualifies for the postpartum benefit.

ARM 37.82.701 Proposed changes would remove language requiring the department to verify a pregnancy, as it is currently done through self-attestation; update the postpartum coverage language from 60 days to 12 months; and update the language for family medically needy group to reflect current processes.

ARM 37.86.202, 37.86.3402, and 37.86.3405 Proposed changes in these rules would update language to reflect the change of coverage from 60 days to 12 months postpartum.

#### Fiscal Impact

This proposed rule amendment has an administrative cost of \$4,518,146 in state fiscal year (SFY) 2024 and \$4,700,222 in SFY2025. The proposed rulemaking is estimated to provide extended postpartum coverage to 1,027 women in FY24 and 1,037 women in FY25. Those covered under the 12-month postpartum coverage are eligible for the full Medicaid/CHIP benefits package.

5. The department intends to apply these proposed rule amendments 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., June 7, 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. Such written request may be mailed or delivered to the contact person in 6 above.

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 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 April 30, 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 37.114.101, 37.114.203, and ) PROPOSED AMENDMENT  
37.114.204 pertaining to )  
communicable disease control )

TO: All Concerned Persons

1. On May 30, 2024, at 2:00 p.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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81031718554?pwd=cXNnZ0ZuUk0rdkRVcGYwaXBwRFU0UT09>, meeting ID: 810 3171 8554, and password: 192321; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 810 3171 8554, and password: 192321. Find your local number: <https://mt-gov.zoom.us/u/kdVM45Dnkl>.

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 May 16, 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 provide as follows, new matter underlined, deleted matter interlined:

37.114.101 DEFINITIONS In addition to the definitions contained in 50-1-101, MCA, unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Case" means a person who is confirmed or suspected to have a reportable disease or condition as listed in ARM 37.114.203.

(2) "Contact" means a person or animal that may have had an opportunity to acquire an infection due to the contact's association with a suspected or confirmed infected person or animal or a contaminated environment.

(3) "~~Contamination~~ Contaminated" means the presence of a disease-causing agent upon a living body surface or within or upon any inanimate article or substance.

(4) "Control of Communicable Diseases Manual" means the publication adopted and incorporated by reference in ARM 37.114.105(1)(a).

(5) "Day care facility" has the meaning provided for under 52-2-703, MCA.

(6) "Directly observed therapy (DOT)" means the method whereby a trained health care worker or another trained designated person watches a patient swallow each dose of antituberculosis medication and documents it. DOT can include electronic directly observed therapy (eDOT) utilizing a video conferencing application only with express permission from the state TB program.

(7) "Form" means a paper form or electronically submitted information consisting of data elements necessary to implement effective surveillance, investigation, or mitigation of reportable diseases and outbreaks.

(8) "Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" means the publication adopted and incorporated by reference in ARM 37.114.105(1)(b).

(9) "Health care" means health care as defined in 50-16-504, MCA.

(10) "Health care facility" is a facility as defined in 50-5-101, MCA.

(11) "Health care provider" means a health care provider as defined in 50-16-504, MCA.

(12) "HIV infection" means infection with the human immunodeficiency virus.

(13) "Household contact" is a person or animal living within the household of an infected person.

(14) "Infected person" means a person who harbors an infectious agent whether or not illness is currently discernible.

(15) "Infection" means the entry and development or multiplication of an infectious agent in the body of man or animals.

(16) "Infection control precautions" means those measures necessary to prevent the transmission of disease from an infected person to another person, taking into consideration the specific suspected or confirmed communicable disease and the specific circumstances of the case. The infection control precautions required for a case admitted to a hospital or other health care facility are those measures identified as isolation precautions applicable to the specific disease in the "Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" adopted and incorporated by reference in ARM 37.114.105(1)(b). The infection control precautions required for a case not admitted to a hospital or other health care facility are those measures identified as methods of control applicable to the specific disease in the "Control of Communicable Diseases Manual", adopted and incorporated by reference in ARM 37.114.105(1)(a). Infection control precautions are required, as stated in this rule, whether or not the person is subject to isolation.

(17) "Infectious agent" means an organism including virus, rickettsia, bacteria, fungus, protozoan, prion, or helminth that is capable of producing an infection or infectious disease.

(18) "Infectious disease" means a clinically manifest disease of man or animals resulting from an infection.

(19) "Infectious person" means a person from whom another person may acquire an infectious agent by touch or proximity.

(20) "Institutional and congregate setting" means a setting in which a group of unrelated persons reside, meet, or gather either for a limited or extended period of time in close physical proximity. The term includes correctional facilities, day care

facilities, detention centers, group homes, health care facilities as defined in 50-5-101, MCA, schools, and youth camps.

~~(20)~~(21) "Laboratory" means any facility or other area used by microbiological, serological, chemical, hematological, immunohematological, molecular, biophysical, cytological, pathological or other examinations of human body fluids, secretions, excretions, or excised or exfoliated tissues, for the purpose of providing information for the diagnosis, prevention or treatment of any human disease or impairment, for the assessment of human health.

~~(24)~~(22) "Laboratory Professional" means any person who supervises or works in a laboratory.

~~(22)~~(23) "Multidrug-Resistant Organisms (MDRO)" means microorganisms, predominantly bacteria, that are resistant to one or more classes of antimicrobial agents.

~~(23)~~(24) "Outbreak" means the occurrence of more cases of a disease than would normally be expected in a specific place or group of people over a given period of time.

~~(24)~~(25) "Potential outbreak" means the presence or suspected presence of a communicable disease in a population where the number of susceptible persons and the mode of transmission of the disease may cause further transmission of that disease.

~~(25)~~(26) "Reportable disease" means any disease, the occurrence or suspected occurrence of which is required to be reported by ARM 37.114.203.

~~(26)~~(27) "Sensitive occupation" means an occupation described in ARM 37.114.301.

~~(27)~~(28) "Sexually transmitted infection" means human immunodeficiency virus (HIV) infection, syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, or all chlamydia trachomatis infections including chlamydial genital infections.

~~(28)~~(29) "Sexually Transmitted Infections Treatment Guidelines" means the guidelines adopted and incorporated by reference in ARM 37.114.105(1)(c).

~~(29)~~(30) "Surveillance" means scrutiny of all aspects of occurrence and transmission of a disease that are pertinent to effective control.

~~(30)~~(31) "Susceptible" means having insufficient resistance against a disease and likely to contract the disease if exposed.

~~(34)~~(32) "Toxic Metals" means individual metals and metal compounds that may negatively affect an individual's health and shall include, for the purpose of these rules, includes arsenic, cadmium, lead, and mercury ~~for the purposes of these rules.~~

~~(32)~~(33) "Youth camp" has the meaning provided for under 50-52-101, MCA.

AUTH: 50-1-202, 50-2-116, 50-17-103, MCA

IMP: 50-1-202, 50-17-103, 50-18-101, MCA

37.114.203 REPORTABLE DISEASES AND OTHER CONDITIONS OF PUBLIC HEALTH IMPORTANCE (1) The following communicable diseases and conditions and other conditions of public health importance are reportable:

(a) Acute flaccid myelitis (AFM);

- (a)(b) AIDS, as defined by the Centers for Disease Control and Prevention, and HIV infection, as determined by a positive result from a test approved by the Federal Food and Drug Administration for the detection of HIV, including antibody, antigen, and all HIV nucleic acid tests;
- ~~(b)~~ Anaplasmosis;
- (c) Anthrax;
- (d) Arboviral diseases, neuroinvasive and nonneuroinvasive (California serogroup, Chikungunya, Eastern equine encephalitis, Powassan, Saint Louis encephalitis, West Nile virus, Western equine encephalitis, Zika virus infection);
- (e) Arsenic poisoning ( $\geq 70$  micrograms per liter ( $\mu\text{g/L}$ ) total arsenic in urine; or  $\geq 35$   $\mu\text{g/L}$  methylated plus inorganic arsenic in urine);
- (f) Babesiosis;
- (g) Botulism (including infant, foodborne, other, and wound botulism);
- (h) Brucellosis;
- (i) Cadmium poisoning ( $\geq$  five  $\mu\text{g/L}$  total blood cadmium levels; or  $\geq$  three  $\mu\text{g/L}$  total cadmium in urine);
- (j) *Candida auris* (*C. auris*);
- (k) Campylobacteriosis;
- (l) Carbapenemase-producing carbapenem-resistant organisms (CP-CRO);
- ~~(l)~~(m) Chancroid;
- ~~(m)~~(n) Chlamydia trachomatis infection;
- ~~(n)~~(o) Cholera;
- ~~(o)~~(p) Coccidioidomycosis;
- ~~(p)~~(q) Colorado tick fever;
- ~~(q)~~(r) Coronavirus Disease 2019 (COVID-19);
- (s) Cronobacter in infants;
- ~~(r)~~(t) Cryptosporidiosis;
- ~~(s)~~(u) Cyclosporiasis;
- ~~(t)~~(v) Dengue virus infections;
- ~~(u)~~(w) Diphtheria;
- ~~(v)~~ Ehrlichiosis;
- ~~(w)~~(x) *Escherichia coli*, Shiga toxin-producing (STEC);
- ~~(x)~~(y) Gastroenteritis outbreak;
- ~~(y)~~(z) Giardiasis;
- ~~(z)~~(aa) Gonorrheal infection;
- ~~(aa)~~(ab) Granuloma inguinale;
- (ac) Group A Streptococcus, invasive disease;
- ~~(ab)~~(ad) *Haemophilus influenzae*, invasive disease;
- ~~(ac)~~(ae) Hansen's disease (leprosy);
- ~~(ad)~~(af) Hantavirus pulmonary syndrome or infection;
- ~~(ae)~~(ag) Hemolytic uremic syndrome, post diarrheal;
- ~~(af)~~(ah) Hepatitis A, acute;
- ~~(ag)~~(ai) Hepatitis B, acute, chronic, perinatal;
- ~~(ah)~~(aj) Hepatitis C, acute, chronic;
- ~~(ai)~~(ak) Influenza;
- ~~(aj)~~(al) Lead levels in a capillary blood specimen of  $\geq 3.5$  micrograms per deciliter( $\mu\text{g/dL}$ ) in a person less than 16 years of age;

~~(ak)~~(am) Lead levels in a venous blood specimen at any level;  
~~(al)~~(an) Legionellosis;  
~~(am)~~(ao) Leptospirosis;  
~~(an)~~(ap) Listeriosis;  
~~(ao)~~(aq) Lyme disease;  
~~(ap)~~(ar) Lymphogranuloma venereum;  
~~(aq)~~(as) Malaria;  
~~(ar)~~(at) Measles (rubeola);  
~~(as)~~(au) Melioidosis;  
~~(at)~~(av) Meningococcal disease (Neisseria meningitidis);  
~~(au)~~(aw) Mercury poisoning ( $\geq$  ten  $\mu\text{g/L}$  total mercury in urine; or  $\geq$  ten  $\mu\text{g}$  elemental mercury/g creatinine in urine; or  $\geq$  ten  $\mu\text{g/L}$  elemental, organic, and inorganic blood mercury levels);  
(ax) Multisystem inflammatory syndrome in children (MIS-C);  
~~(av)~~(ay) ~~Monkeypox;~~ Mpox;  
~~(aw)~~(az) Mumps;  
~~(ax)~~(ba) Pertussis;  
~~(ay)~~(bb) Plague;  
~~(az)~~(bc) Poliomyelitis, paralytic or nonparalytic;  
~~(ba)~~(bd) Psittacosis;  
~~(bb)~~(be) Q-fever (acute and chronic);  
~~(bc)~~(bf) Rabies in a human or animal; exposure to a human by a species susceptible to rabies infection;  
(bg) Rickettsial diseases (including spotted fevers, flea-borne typhus, scrub typhus, anaplasmosis, and ehrlichiosis);  
~~(bd)~~(bh) Rubella (including congenital);  
~~(be)~~(bi) Salmonella Paratyphi infection;  
~~(bf)~~(bj) Salmonella Typhi infection;  
~~(bg)~~(bk) Salmonellosis;  
~~(bh)~~(bl) Severe acute respiratory syndrome-associated coronavirus (SARS-CoV) disease;  
~~(bi)~~(bm) Shigellosis;  
~~(bj)~~(bn) Smallpox;  
~~(bk)~~ ~~Spotted fever rickettsiosis;~~  
~~(bl)~~(bo) Streptococcus pneumoniae, invasive disease;  
~~(bm)~~(bp) Streptococcal toxic shock syndrome (STSS);  
~~(bn)~~(bq) Syphilis;  
~~(bo)~~(br) Tetanus;  
~~(bp)~~(bs) Tickborne relapsing fevers;  
~~(bq)~~(bt) Toxic shock syndrome (TSS) (nonstreptococcal);  
~~(br)~~(bu) Transmissible spongiform encephalopathies (including Creutzfeldt Jakob Disease);  
~~(bs)~~(bv) Trichinellosis (trichinosis);  
~~(bt)~~(bw) Tuberculosis (TB) including latent tuberculosis infection;  
~~(bu)~~(bx) Tularemia;  
~~(bv)~~(by) Varicella (chickenpox);  
~~(bw)~~(bz) Vibriosis;

~~(bx)~~(ca) Viral hemorrhagic fevers; and

~~(by)~~(cb) Yellow fever.

(2) Also reportable is an outbreak of any communicable disease listed in the "Control of Communicable Diseases Manual" that occurs in an institutional or congregate setting and any unusual incident of unexplained illness or death in a human or animal with potential human health implications.

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) A local health officer must immediately report (within four hours) to the department by telephone the information cited in ARM 37.114.205(1) through (2) whenever a case of one of the following diseases or other condition of public health importance is suspected or confirmed:

(a) Anthrax;  
(b) Botulism;  
(c) Plague;  
(d) Poliomyelitis, paralytic or nonparalytic;  
(e) Severe acute respiratory syndrome-associated coronavirus (SARS-CoV) disease;

(f) Smallpox;  
(g) Tularemia; or  
(h) Viral hemorrhagic fevers.

(2) A local health officer must transmit by telephone or secure electronic means to the department the information required by ARM 37.114.205(1) and (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) Information about a case of one of the following diseases should be submitted within 24 hours after it is received by the local health officer:

(i) an outbreak of a disease or condition specified in ARM 37.114.203;  
(ii) any unusual incident of illness or death in a human or animal with potential human health implications;

(iii) Acute flaccid myelitis (AFM);

~~(iii)~~(iv) Brucellosis;

(v) Cronobacter in infants;

~~(iv)~~(vi) Diphtheria;

~~(v)~~(vii) Gastroenteritis outbreak;

~~(vi)~~(viii) Influenza-associated hospitalization and mortality;

~~(vii)~~(ix) Measles;

~~(viii)~~(x) Melioidosis;

~~(ix)~~(xi) Monkeypox; Mpox;

~~(x)~~(xii) Rabies in a human;

~~(xi)~~(xiii) Rabies in an animal;

~~(xii)~~(xiv) Rubella; and

~~(xiii)~~(xv) Syphilis.



(b) Information about a case of one of the following diseases must be submitted within seven calendar days after it is received by the local health officer:

- (i) AIDS or HIV infection;
- ~~(ii)~~ Anaplasmosis;
- ~~(iii)~~ (ii) Arboviral diseases, neuroinvasive and non-neuroinvasive (California serogroup, Chikungunya, Eastern equine encephalitis, Powassan, Saint Louis encephalitis, West Nile virus, Western equine encephalitis, Zika virus infection);
- ~~(iv)~~ (iii) Arsenic poisoning ( $\geq 70$   $\mu\text{g/L}$  total arsenic in urine; or  $\geq 35$   $\mu\text{g/L}$  methylated plus inorganic arsenic in urine);
- ~~(v)~~ (iv) Babesiosis;
- ~~(vi)~~ (v) Cadmium poisoning ( $\geq$  five  $\mu\text{g/L}$  total blood cadmium levels; or  $\geq$  three  $\mu\text{g/L}$  total cadmium in urine);
- ~~(vii)~~ (vi) Campylobacteriosis;
- ~~(viii)~~ (vii) Candida auris (C. auris);
- (viii) Carbapenemase-producing carbapenem-resistant organisms (CP-

CRO):

- (ix) Chancroid;
- (x) Chlamydial trachomatis infection;
- (xi) Cholera;
- (xii) Coccidioidomycosis;
- (xiii) Colorado tick fever;
- (xiv) Coronavirus Disease 2019 (COVID-19);
- (xv) Cryptosporidiosis;
- (xvi) Cyclosporiasis;
- (xvii) Dengue virus infections;
- (xviii) Escherichia coli, Shiga toxin-producing (STEC);
- ~~(xviii)~~ (xix) Giardiasis;
- ~~(xix)~~ (xx) Gonorrhea;
- (xxi) Granuloma inguinale;
- (xxii) Group A Streptococcus, invasive disease;
- ~~(xx)~~ (xxiii) Haemophilus influenzae, invasive disease;
- ~~(xxi)~~ (xxiv) Hansen's disease (leprosy);
- ~~(xxii)~~ (xxv) Hantavirus pulmonary syndrome or infection;
- ~~(xxiii)~~ (xxvi) Hemolytic uremic syndrome, post diarrheal;
- ~~(xxiv)~~ (xxvii) Hepatitis A, acute;
- ~~(xxv)~~ (xxviii) Hepatitis B, acute, chronic, perinatal;
- ~~(xxvi)~~ (xxix) Hepatitis C, acute, chronic;
- ~~(xxvii)~~ (xxx) Lead levels in a capillary blood specimen of  $\geq 3.5$  micrograms per deciliter( $\mu\text{g/dL}$ ) in a person less than 16 years of age;
- ~~(xxviii)~~ (xxxi) Lead levels in a venous blood specimen at any level;
- ~~(xxix)~~ (xxxii) Legionellosis;
- ~~(xxx)~~ (xxxiii) Leptospirosis;
- ~~(xxxi)~~ (xxxiv) Listeriosis;
- ~~(xxxii)~~ (xxxv) Lyme disease;
- ~~(xxxiii)~~ (xxxvi) Malaria;
- ~~(xxxiv)~~ (xxxvii) Meningococcal disease (Neisseria meningitidis);

~~(xxxv)~~~~(xxxviii)~~ Mercury poisoning ( $\geq$  ten  $\mu\text{g/L}$  total mercury in urine; or  $\geq$  ten  $\mu\text{g}$  elemental mercury/g in creatinine in urine; or  $\geq$  ten  $\mu\text{g/L}$  elemental, organic, and inorganic blood mercury levels);

(xxxix) Multisystem inflammatory syndrome in children (MIS-C);

~~(xxxvi)~~(xl) Mumps;

~~(xxxvii)~~(xli) Pertussis;

~~(xxxviii)~~(xlii) Psittacosis;

~~(xxxix)~~(xliii) Q-fever (acute and chronic);

(xliv) Rickettsial diseases (including spotted fevers, flea-borne typhus, scrub typhus, anaplasmosis, and ehrlichiosis);

~~(xl)~~(xlv) Salmonella Paratyphi infection;

~~(xli)~~(xlvi) Salmonella Typhi infection;

~~(xlii)~~(xlvii) Salmonellosis;

~~(xliii)~~(xlviii) Shigellosis;

~~(xliv)~~ Spotted fever rickettsiosis;

~~(xlv)~~(xlix) Streptococcus pneumoniae, invasive disease;

~~(xli)~~(l) Streptococcal toxic shock syndrome (STSS);

~~(xlvii)~~(li) Tetanus;

~~(xlviii)~~(lii) Tickborne relapsing fevers;

~~(xlix)~~(liii) Toxic shock syndrome (nonstreptococcal) (TSS);

~~(l)~~(liv) Transmissible spongiform encephalopathies;

~~(li)~~(lv) Trichinellosis (trichinosis);

~~(lii)~~(lvi) Tuberculosis (TB) including latent tuberculosis infection;

~~(liii)~~(lvii) Varicella (chickenpox);

~~(liv)~~ Vibrio cholera infection (cholera);

~~(lv)~~(lviii) Vibriosis; and

~~(lvi)~~(lix) Yellow fever.

(3) Each week during which a laboratory-confirmed case of influenza is reported to the local health officer, the officer must transmit by secure electronic means to the department on Friday of that week the total number of the cases of influenza reported.

(4) For any animal exposure that may result in a risk of rabies transmission to a human by a species susceptible to rabies infection, the local health officer must report by secure electronic means to the department documentation of a rabies post-exposure prophylaxis recommendation or administration ~~on a form provided by the department~~ within seven calendar days of the recommendation or administration.

(5) A laboratory that performs testing associated with HIV infection must report:

(a) any test result or combination of test results that indicate HIV infection;

(b) all CD4 T-lymphocyte test results unless it is known that the test was performed in association with a disease other than HIV infection or HIV-related illness;

(c) HIV nucleic acid tests, RNA or DNA, irrespective of result;

(d) all test results for assays designed to assess HIV infection subtype and resistance to antiretroviral drugs, including nucleotide sequences, in a format designated by the department; and

(e) submit a specimen utilized for surveillance purposes only, to the department's public health laboratory upon request.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.114.101, 37.114.203, and 37.114.204 pertaining to communicable disease control.

These proposed amendments are necessary to keep Montana communicable disease control administrative rules current with national disease surveillance, investigation, and control recommendations. The proposed amendments are also necessary to clarify terms used within rules and make the rules more user friendly.

##### ARM 37.114.101

The department is proposing to add a definition for "institutional and congregate setting" to clarify the types of settings in which an outbreak of communicable disease is reportable under ARM 37.114.203(2).

##### ARM 37.114.203

The department is proposing to amend this rule to update the definition of reportable conditions and naming convention for certain reportable conditions. The department is also proposing to amend this rule to update the list of reportable conditions to include all conditions listed in the confirmation of disease rule, ARM 37.114.313.

##### ARM 37.114.204

The department is proposing to amend this rule to update the definition of reportable conditions and the associated timeline for reporting those conditions. The department is also proposing to amend this rule to update the naming convention for certain reportable conditions. Finally, the department is proposing to amend this rule to update the list of reportable conditions to contain all conditions listed in ARM 37.114.203 and 37.114.313.

##### Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

5. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

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., June 7, 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. Such written request may be mailed or delivered to the contact person in 6 above.

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 rules will not significantly and directly impact small businesses.

/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 April 30, 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 37.81.304 pertaining to the big ) PROPOSED AMENDMENT  
sky rx program )

TO: All Concerned Persons

1. On June 3, 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/88148541902?pwd=VWU4QmpnNZmZra29QMctvOHRuRExwQT09>, meeting ID: 881 4854 1902, and password: 009508; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 881 4854 1902, and password: 009508. Find your local number: <https://mt-gov.zoom.us/j/88148541902?pwd=VWU4QmpnNZmZra29QMctvOHRuRExwQT09>.

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 May 20, 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:

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~\$38.90~~ \$42.20 per month. The benefit amount will not exceed ~~\$38.90~~ \$42.20 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~\$38.90~~ \$42.20 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~\$38.90~~ \$42.20, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Big Sky Rx program contributes to the cost of an eligible Montana resident's premium payment in a federally approved Medicare Prescription Drug Plan (PDP). The maximum premium payment Big Sky Rx can pay each month is based on the federal program which is called Social Security Extra Help or Low-Income Subsidy (LIS).

Each calendar year, CMS updates the LIS premium. Each year, the premium subsidy amounts are calculated by CMS using the statutory and plan-bid components of the Regional MA Benchmarks.

Big Sky Rx maximum monthly premium payment will change each year to match the federal LIS premium as outlined in 42 CFR 423.780. This rule notice proposes to change the subsidy from \$38.90 to \$42.20 per month, which is the maximum premium Big Sky Rx is allowed to pay based on LIS for calendar year 2024.

The Big Sky Rx program currently serves approximately 9,000 members and has an enrollment cap of 11,000 members. Approximately 15% of the Big Sky Rx members are affected by this change each year.

#### Fiscal Impact

This rule proposal will affect 1,117 Montanans who will see an increase in the amount of monetary assistance from the Big Sky Rx program for their monthly Medicare prescription drug premium. This rule proposal will increase the state special fund spending by \$3,686.10 per month or \$44,233.20 on an annual basis.

5. The department intends for this rule amendment to be effective retroactive to January 1, 2024.

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., June 7, 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. Such written request may be mailed or delivered to the contact person in 6 above.

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.

/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 April 30, 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 37.40.830 pertaining to hospice ) PROPOSED AMENDMENT  
reimbursement )

TO: All Concerned Persons

1. On May 31, 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 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/85606218557?pwd=cUdwSjdzVW0vVmN5VkxEd2dLOHp5QT09>, meeting ID: 856 0621 8557, and password: 308965; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 856 0621 8557, and password: 308965. Find your local number: <https://mt-gov.zoom.us/j/85606218557?pwd=cUdwSjdzVW0vVmN5VkxEd2dLOHp5QT09>.

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 May 17, 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:

37.40.830 HOSPICE, REIMBURSEMENT (1) through (9) remain the same.

(10) The department adopts and incorporates by reference the Hospice Rates FFY23 24 fee schedule, effective October 1, ~~2022~~ 2023. Copies of the department's current fee schedules are posted at <https://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Senior & and Long Term Care Division, ~~1100 N. Last Chance Gulch~~, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-6-113, MCA  
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY



The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule, effective October 1, 2023. This new fee schedule is being proposed in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare & Medicaid Services (CMS) under the final Medicare hospice rule published on August 2, 2023. 88 FR 51164 (Aug. 2, 2023).

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 3.1%, as computed and published by CMS, which will apply to providers in all 56 counties. Montana hospice rates are affected by a wage index applied geographically by county. The 2024 wage index has increased for Carbon, Stillwater, and Yellowstone Counties by approximately 1.6%. The wage index for Cascade County has decreased by 3.3%. The wage index for Missoula County has decreased by approximately 1.3%. The remainder of the Montana counties are subject to the rural index rate, which decreased by approximately 1%. Additionally, two hospice providers will see a hospice reimbursement rate decrease of 4% for failure to comply with the federal quality data submission requirements during the prior fiscal year.

A copy of the proposed hospice fee schedule can be found at:  
<https://medicaidprovider.mt.gov/proposedfs>.

The proposed rule amendment is necessary to pay Medicaid providers according to the current Medicare fee schedule, effective October 1, 2023. Failure to amend the rule will result in a deficient state hospice reimbursement rate from the current federal rate, which would result in underpayment to hospice providers and introduce an inability for the state to comply with federal requirements pertaining to hospice providers.

#### Fiscal Impact

The proposed rule amendment will have a fiscal impact on the Hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In State Fiscal Year (FY) 2023, approximately 229 Medicaid recipients received the hospice benefit. The projected budget for 2024 is \$3.4 million, which reflects an increase of \$28,838.00 from FY 2023.

The majority of the Medicaid hospice program's budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

5. The increase in hospice rates will be applied retroactively to October 1, 2023. Any decreases in hospice rates will not be applied retroactively and will be effective upon adoption of the amendments proposed in this rulemaking notice.

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., June 7, 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. Such written request may be mailed or delivered to the contact person in 6 above.

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/ 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 April 30, 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 37.12.401 and 37.57.301 ) PROPOSED AMENDMENT  
pertaining to laboratory analyses and )  
newborn screening )

TO: All Concerned Persons

1. On May 31, 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 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/86510479190?pwd=VThXN3pCZzRMbXRmVFg1bVVOT0JKdz09>, meeting ID: 865 1047 9190, and password: 235611; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 865 1047 9190, and password: 235611. Find your local number: <https://mt-gov.zoom.us/u/kbsHetBxtz>.

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 May 17, 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 provide as follows, new matter underlined, deleted matter interlined:

37.12.401 LABORATORY FEES FOR ANALYSES (1) remains the same.

(2) The department will maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Public Health Laboratory Testing Fee Schedule and the Environmental Laboratory Testing Fee Schedule effective ~~December 1, 2023~~ June 1, 2024, which are available on the web site of the Department of Public Health and Human Services at <https://dphhs.mt.gov/publichealth/LaboratoryServices/index>, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) and (4) remain the same.

AUTH: 50-1-202, MCA  
IMP: 50-1-202, MCA

37.57.301 DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) through (3)(i) remain the same.
- (j) Severe combined immunodeficiency disease; ~~and~~
- (k) Spinal muscular atrophy (SMA); and
- (l) X-linked adrenoleukodystrophy (X-ALD).

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.12.401 and 37.57.301 regarding newborn screening and the fees charged for such screening panel tests by the department's public health laboratory. The proposed rule amendments add X-linked adrenoleukodystrophy (X-ALD) to the list of required newborn screening panel tests.

##### ARM 37.12.401

The department is proposing to amend ARM 37.12.401 to adopt and incorporate by reference an updated laboratory test fee list that takes into account the addition of X-ALD to the newborn screening tests. A copy of the proposed laboratory fee schedule is electronically accessible at:  
<https://dphhs.mt.gov/publichealth/LaboratoryServices/PublicHealthLabTesting>.

The fee for newborn screening panel tests is currently \$145.00. The department is proposing to revise the fee to \$150.50 due to the addition of the X-ALD test. The proposed rule change is necessary to align with the changes being proposed to ARM 37.57.301.

##### ARM 37.57.301

The department is proposing to amend the definition of "newborn screening tests" by adding X-ALD to the list of required newborn screening panel tests. X-ALD is one of the primary conditions that the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services has included in the recommended uniform screening panel (RUSP) for newborn screening. Essential requirements for inclusion in the RUSP are that the conditions are chosen based on evidence that supports the potential net benefit of screening, the ability of states to screen for the disorder, and the availability of effective treatments. Due to technological and medical advances, newborns with X-ALD can be screened in a highly effective manner and babies who are identified soon after birth through newborn screening can survive and lead productive lives. The proposed rule change is necessary to conform with HRSA's RUSP for all newborns and to update

newborn bloodspot screening to reflect current standards of care for babies born in Montana.

### Fiscal Impact

The proposed rule changes affect newborns and their families, birthing hospitals, birthing centers, and small businesses providing direct-entry midwifery services. There are approximately 12,500 babies born in Montana every year. The cost for the addition of the X-ALD test to the newborn screening panel is \$5.50 per test. Given the modest cost of this test, the department does not anticipate these proposed rule changes will have a significant fiscal impact.

5. The department intends these rule amendments to be effective August 1, 2024.

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., June 7, 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. Such written request may be mailed or delivered to the contact person in 6 above.

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 rules will not significantly and directly impact small businesses.

/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 April 30, 2024.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULES I through III pertaining to	)	REPEAL
definitions, out-of-state state-chartered	)	
bank or national bank seeking to	)	
exercise fiduciary powers in Montana,	)	
and out-of-state nonbank trust	)	
companies seeking to exercise	)	
fiduciary powers in Montana and the	)	
repeal of ARM 2.59.136 pertaining to	)	
fiduciary foreign trust companies	)	

TO: All Concerned Persons

1. On March 22, 2024, the Department of Administration published MAR Notice No. 2-59-642 pertaining to the proposed adoption and repeal of the above-stated rules at page 490 of the 2024 Montana Administrative Register, Issue Number 6.

2. No comments were received.

3. The department has adopted NEW RULE I (ARM 2.59.2101), NEW RULE II (ARM 2.59.2102), and NEW RULE III (ARM 2.59.2103), exactly as proposed.

4. The department has repealed ARM 2.59.136 as proposed.

/s/ Misty Ann Giles  
Misty Ann Giles, Director  
Department of Administration

/s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 8.101.302 and the repeal of ARM	)	REPEAL
8.101.202 and 8.101.203 pertaining to	)	
the submission and review of	)	
applications for funding under the Coal	)	
Board	)	

TO: All Concerned Persons

1. On March 22, 2024, the Department of Commerce published MAR Notice No. 8-101-212 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 499 of the 2024 Montana Administrative Register, Issue Number 6.

2. No comments or testimony were received.

3. The department has amended and repealed the above-stated rules as proposed.

/s/ John Semmens  
John Semmens  
Rule Reviewer

/s/ Mandy Rambo  
Mandy Rambo  
Deputy Director  
Department of Commerce

Certified to the Secretary of State April 30, 2024.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION,  
RULE I, the amendment of ARM ) AMENDMENT, AND REPEAL  
17.24.102, 17.24.107, 17.24.116, )  
17.24.118, 17.24.128, 17.24.132, ) (MINING BUREAU)  
17.24.141, 17.24.144, 17.24.145, )  
17.24.146, 17.24.150, 17.24.159, )  
17.24.166, and 17.24.171, and the )  
repeal of ARM 17.24.165 and )  
17.24.170 pertaining to regulation of )  
hard rock mining and exploration )

TO: All Concerned Persons

1. On January 12, 2024, the Department of Environmental Quality published MAR Notice No. 17-437 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 4 of the 2024 Montana Administrative Register, Issue Number 1.

2. The department has adopted the above-stated rule as proposed: NEW RULE I (17.24.109).

3. The department has amended the above-stated rules as proposed.

4. The department has repealed the above-stated rules as proposed.

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The proposed definition of "permit area" in ARM 17.24.102(16) should not be amended from the "disturbed land" as defined in 82-4-303(9), MCA, to include all additional areas extending to the "permit boundary." Such an expansion in the defined area would have an adverse effect upon private property interests because it would preclude areas within a permit boundary from being mined under the authorization of a small miner exclusion statement. Because the proposed change in this definition could result in a "regulatory taking" under the 5th amendment of the United States Constitution, permits existing prior to this proposed rule change should be grandfathered to utilize the prior definition.

RESPONSE 1: The department appreciates the comment. First, it should be noted that pursuant to 82-4-305(10), MCA, an "area under permit" does not qualify for a small miner exemption from the operating permit requirements of the Metal Mine Reclamation Act, 82-4-301, et seq., MCA. Second, the department specifically conducted a legal review of all the proposed rule changes and concluded that no

regulatory takings would result from the proposed change in this definition. Third, any applicant who has the legal right to mine on the land covered by an operating permit, pursuant to 82-4-335(4)(h), MCA, must submit a map with the application to define the area the applicant is requesting that the department include in the permit area. The department does not mandate the size of the permit area, but rather it verifies that the applicant's requested permit area is commensurate with the requirements of the Act. Therefore, no regulatory taking is possible because any operating permit area is established at the request of the applicant and the permit is established through a process that includes public notice and provides opportunity for public participation and judicial review. The amended definition of "permit area" is logical, coherent with existing regulatory procedures, and consistent with the provisions of the Metal Mine Reclamation Act, 82-4-301, et seq., MCA. No "grandfathering" of definitions is necessary.

/s/ Nicholas Whitaker  
NICHOLAS WHITAKER  
Rule Reviewer

/s/ Christopher Dorrington  
CHRISTOPHER DORRINGTON  
Director  
Department of Environmental Quality

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 17.50.1612, 17.50.1617,	)	
17.50.1618, 17.55.109, 17.56.507,	)	(STATE SUPERFUND,
and 17.56.608 pertaining to	)	PETROLEUM TANK CLEANUP,
incorporation by reference	)	AND SOLID WASTE)

TO: All Concerned Persons

1. On January 12, 2024, the Department of Environmental Quality published MAR Notice No. 17-438 pertaining to the proposed amendment of the above-stated rules at page 20 of the 2024 Montana Administrative Register, Issue Number 1.

2. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

17.50.1612 ANALYTICAL METHODS (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains as proposed.

(b) Montana Risk-based Corrective Action Guidance for Petroleum Releases, ~~(December 2023)~~ (February 2024) as the analytical methodology landfarms must utilize and Table 1 of the Montana Risk-based Corrective Action Guidance for Petroleum Release as the standards for compliance with remediation requirements outlined in ARM 17.50.1617. A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, ~~(December 2023)~~ (February 2024) may be obtained at ~~http://deq.mt.gov/Land/ust~~ https://deq.mt.gov/cleanupandrec/Programs/petrocleanup or by contacting the Department of Environmental Quality at P.O. Box 200901, Helena, MT 59620-0901 or 1 (406) 444-5300.

(2) remains as proposed.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

17.50.1617 LANDFARM FACILITY REMEDIATION STANDARDS

(1) Contaminated soils are considered remediated when:

(a) contaminant concentrations listed in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 ~~(December 2023)~~ (February 2024) are permanently reduced to the residential RSBL concentrations.

(2) and (3) remain as proposed.

(4) The owner or operator of a landfarm facility may not supply or use soils for any purpose exceeding the contaminant concentrations specified in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 ~~(December 2023)~~ (February 2024).

(5) remains as proposed.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

17.50.1618 CLOSURE PLAN (1) For purposes of closure of a landfarm facility, the owner or operator of a landfarm facility shall submit a closure plan that documents the following:

(a) and (b) remain as proposed.

(c) one of the following requirements was satisfied:

(i) and (ii) remain as proposed.

(iii) all contaminated soils were remediated to Table 1 residential RSBL concentrations in the Montana Risk-based Corrective Action Guidance for Petroleum Releases, ~~(December 2023)~~ (February 2024) and are capable of supporting native vegetation;

(d) through (3) remain as proposed.

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain as proposed.

(c) Montana Risk-based Corrective Action Guidance for Petroleum Releases ~~(December 2023)~~ (February 2024);

(d) through (5) remain as proposed.

AUTH: 75-10-702, 75-10-704, MCA

IMP: 75-10-702, 75-10-704, 75-10-711, MCA

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains as proposed.

(b) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) ~~(December 2023)~~ (February 2024);

(c) through (3) remain as proposed.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain as proposed.

(c) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) ~~(December 2023)~~ (February 2024); and

(d) through (3) remain as proposed.

AUTH: 75-11-319, 75-11-505, MCA  
IMP: 75-11-309, 75-11-505, MCA

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: A commenter reviewed the VF calculations for the December 2023 RBSL calculations and found an error that may have been associated with the 2018 VF calculations. Using all the MADEP and EPA input parameters for C9-C18 Aliphatics as referenced for the other fractions that go into calculation of the apparent diffusivity (Da), the commenter got a Da of 0.00006 cm<sup>2</sup>/s, instead of 0.000035 cm<sup>2</sup>/s. The difference in Da results in a VF of 14,752 m<sup>3</sup>/kg, rather than 11,092 m<sup>3</sup>/kg. Using this VF in the RBSL calculations results in slightly different RBSLs for the three scenarios as follows:

Residential 286 mg/kg rounded to 290 mg/kg  
Commercial 1556 mg/kg rounded to 1600 mg/kg  
Construction 5969 mg/kg rounded to 6000 mg/kg

RESPONSE 1: The department appreciates the comment and agrees that the Massachusetts Department of Environmental Protection (MADEP) and the Environmental Protection Agency (EPA) input parameters for C9-C18 aliphatics result in an apparent diffusivity (Da) of .00006 cm<sup>2</sup>/s, which results in changes to the residential, commercial, and construction worker RBSLs for C9-C18. The change in the C9-C18 aliphatic Da and resulting screening levels have been incorporated into the updated RBCA guide and the RBCA date modified to February 2024.

/s/ Nicholas Whitaker  
NICHOLAS WHITAKER  
Rule Reviewer

/s/ Christopher Dorrington  
CHRISTOPHER DORRINGTON  
Director  
Department of Environmental Quality

Certified to the Secretary of State April 30, 2024.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.6.246 pertaining to Political )  
Signs )

TO: All Concerned Persons

1. On March 8, 2024, the Transportation Commission published MAR Notice No. 18-199 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 391 of the 2024 Montana Administrative Register, Issue Number 5.

2. The commission has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Valerie A. Balukas  
Valerie A. Balukas  
Rule Reviewer

/s/ Loran Frazier  
Loran Frazier  
Chair  
Transportation Commission

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.29.601, 24.29.604,	)	ADOPTION, AND REPEAL
24.29.607, 24.29.611, 24.29.616,	)	
24.29.617, 24.29.618, 24.29.621,	)	
24.29.624, 24.29.628, 24.29.703,	)	
24.29.720, 24.29.721, 24.29.801,	)	
24.29.813, 24.29.816, 24.29.818,	)	
24.29.821, 24.29.824, 24.29.831,	)	
24.29.837, 24.29.841, 24.29.844,	)	
24.29.908, 24.29.1201, 24.29.1202,	)	
24.29.1512, 24.29.1513, 24.29.1515,	)	
24.29.1523, 24.29.1534, 24.29.1538,	)	
24.29.1601, 24.29.1611, 24.29.1616,	)	
24.29.1621, 24.29.1710, 24.29.1725,	)	
24.29.1741, 24.29.2605, 24.29.2607,	)	
24.29.2610, 24.29.2614, 24.29.2831,	)	
24.29.2841, 24.29.2843, 24.29.2853,	)	
24.29.3101, 24.29.3103, 24.29.3127,	)	
24.29.3802, 24.29.4303, 24.29.4307,	)	
24.29.4314, 24.29.4321, 24.29.4332,	)	
24.29.4336, and 24.29.4339, the	)	
adoption of NEW RULES I through	)	
VII, and the repeal of ARM 24.29.205,	)	
24.29.206, 24.29.207, 24.29.213,	)	
24.29.215, 24.29.608, 24.29.610,	)	
24.29.622, 24.29.623, 24.29.627,	)	
24.29.704, 24.29.709, 24.29.713,	)	
24.29.804, 24.29.851, 24.29.902,	)	
24.29.907, 24.29.929, 24.29.954,	)	
24.29.956, 24.29.962, 24.29.971,	)	
24.29.1401, 24.29.1501, 24.29.1510,	)	
24.29.1517, 24.29.1522, 24.29.1526,	)	
24.29.1533, 24.29.1701, 24.29.1705,	)	
24.29.1761, 24.29.2002, 24.29.2003,	)	
24.29.2301, 24.29.2303, 24.29.2311,	)	
24.29.2321, 24.29.2323, 24.29.2326,	)	
24.29.2329, 24.29.2331, 24.29.2336,	)	
24.29.2339, 24.29.2341, 24.29.2346,	)	
24.29.2351, 24.29.2356, 24.29.2361,	)	
24.29.2366, 24.29.2371, 24.29.2373,	)	
24.29.2376, 24.29.2379, 24.29.2602,	)	
24.29.2701, 24.29.2811, 24.29.2839,	)	
24.29.2846, 24.29.2849, 24.29.2851,	)	
24.29.2855, 24.29.3107, 24.29.3111,	)	

24.29.3114, 24.29.3117, 24.29.3121, )  
24.29.3124, 24.29.4301, 24.29.4311, )  
24.29.4317, 24.29.4322, and )  
24.29.4329 pertaining to workers' )  
compensation )

TO: All Concerned Persons

1. On March 8, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-29-412 regarding the public hearing on the proposed changes to the above-stated rules, at page 398 of the 2024 Montana Administrative Register, Issue No. 5.

2. On March 28, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Commenters noted that ARM 24.29.4332 was amended to include attorney fees from settlements as a cost, but that fees and costs are distinct. They further noted that fees were addressed in ARM 24.29.4332(6)(a).

RESPONSE 1: The department agrees that clarity would be enhanced by including specificity as to settlements in (6)(a) rather than (6)(b), and the rule is amended as set forth below.

COMMENT 2: A commenter stated that they support most of the proposed changes.

RESPONSE 2: The comment is acknowledged.

COMMENT 3: A commenter suggested that amendments proposed to ARM 24.29.3802 should be made to (2)(a) instead of (2)(b). The commenter further suggested that departmental processes be reviewed.

RESPONSE 3: The department disagrees that the proposed modification would assist in clarity. Subsection (2)(b) addresses settlement petitions to the Workers' Compensation Court. As such, limitations on those petitions are appropriately placed in the subsection. The department is nonetheless consistently reviewing internal processes for improvement. Such is outside the scope of this rulemaking. However, the commenter is invited to engage in a constructive dialogue should they so choose.



COMMENT 4: A commenter suggested that ARM 24.29.3127 represents a constitutional violation because the burden for production of records should be on the insurer. The commenter recognizes that the rules provide additional clarity.

RESPONSE 4: The department agrees that the proposed amendments provide greater clarity. The department does not at this time opine on the constitutionality of the statutory structure regarding medical reopening and closing.

COMMENT 5: A commenter thanked the department for amendments made to ARM 24.29.720.

RESPONSE 5: The comment is acknowledged.

COMMENT 6: A commenter thanked the department for amendments to ARM 24.29.2614 in that reserve reporting would be voluntary. The commenter further suggested that the department not analyze or spend time collecting this information because they question the validity of reserves based on different calculations.

RESPONSE 6: The comment is acknowledged. To the extent the comment engages with departmental business process, the comment is outside the scope of the rulemaking.

COMMENT 7: A commenter suggested that ARM 24.29.1401(3) and (4) be retained because they provide guidance for rules without copying the statute or being extra-statutory. The commenter suggested that the statute does not address balance billing nor does it provide that injuries outside of workers' compensation are not covered by workers' compensation.

RESPONSE 7: The department disagrees. Section 39-71-743(3), MCA sets forth that work compensable injuries must be paid by the liable insurer. Section 39-71-704(11), MCA sets forth the only liabilities for injured workers on accepted claims. The rule text sought to be retained by the commenter duplicates these statutory requirements.

COMMENT 8: A commenter suggested that ARM 24.29.1512(2) be retained. The commenter suggested that the rule is helpful in that it provides that emergency room visits are not the same as the selection of a treating provider and provides guidance for the selection of a treating physician.

RESPONSE 8: The department disagrees. The rule, as proposed to be amended, continues to reflect that emergency room visits are permissible and do not constitute selection of a treating physician. Criteria for the selection of treating physicians continue to be unnecessary.

COMMENT 9: A commenter suggested that ARM 24.29.821(2)(a) should be retained because individuals under the age of 18 should not be permitted to be claims examiners due to their age.

RESPONSE 9: The department disagrees. The age limitation constitutes an unnecessary barrier to entry into the field of claims examination. Whether an individual is capable of performing the functions of a claims examiner should be left to the discretion of the entity hiring the position and to the ability to pass the claims examiner certification examination, rather than subject to the artificial limitation of administrative rule.

COMMENT 10: A commenter suggested that ARM 24.29.1501 should be retained because it sets forth the purpose of the utilization and treatment guidelines. The commenter agrees that the rule is duplicative of statute, but believes it makes the administrative rules more interpretable for readers.

RESPONSE 10: The department disagrees. The rule is substantially duplicative of statute, and administrative rules should not be unnecessarily duplicative of statute. The department disagrees that a generalized statement of purpose is useful in the interpretation or understanding of administrative rules.

COMMENT 11: A commenter suggested that ARM 24.29.801(1) should be amended to clarify its applicability to employers covered by plan 2 or 3 insurers.

RESPONSE 11: The department agrees. While non-coverage of plan 1 insurers is implied, further clarity could be gained. The rule is amended below.

COMMENT 12: A commenter suggested that the catchphrase of ARM 24.29.2614 should be amended to strike the word "settlements." The comment noted that the rule does not have much to do with settlements, and clarity could be enhanced without the word.

RESPONSE 12: The department agrees. The rule is amended below.

4. The agency has amended ARM 24.29.601, 24.29.604, 24.29.607, 24.29.611, 24.29.616, 24.29.617, 24.29.618, 24.29.621, 24.29.624, 24.29.628, 24.29.703, 24.29.720, 24.29.721, 24.29.813, 24.29.816, 24.29.818, 24.29.821, 24.29.824, 24.29.831, 24.29.837, 24.29.841, 24.29.844, 24.29.908, 24.29.1201, 24.29.1202, 24.29.1512, 24.29.1513, 24.29.1515, 24.29.1523, 24.29.1534, 24.29.1538, 24.29.1601, 24.29.1611, 24.29.1616, 24.29.1621, 24.29.1710, 24.29.1725, 24.29.1741, 24.29.2605, 24.29.2607, 24.29.2610, 24.29.2831, 24.29.2841, 24.29.2843, 24.29.2853, 24.29.3101, 24.29.3103, 24.29.3127, 24.29.3802, 24.29.4303, 24.29.4307, 24.29.4314, 24.29.4321, 24.29.4336, and 24.29.4339 as proposed.

5. The agency has adopted NEW RULE I (24.29.235), NEW RULE II (24.29.230), NEW RULE III (24.29.635), NEW RULE IV (24.29.975), NEW RULE V (24.29.980), NEW RULE VI (24.29.2380), and NEW RULE VII (24.29.3105) as proposed.

6. The agency has repealed ARM 24.29.205, 24.29.206, 24.29.207, 24.29.213, 24.29.215, 24.29.608, 24.29.610, 24.29.622, 24.29.623, 24.29.627, 24.29.704, 24.29.709, 24.29.713, 24.29.804, 24.29.851, 24.29.902, 24.29.907, 24.29.929, 24.29.954, 24.29.956, 24.29.962, 24.29.971, 24.29.1401, 24.29.1501, 24.29.1510, 24.29.1517, 24.29.1522, 24.29.1526, 24.29.1533, 24.29.1701, 24.29.1705, 24.29.1761, 24.29.2002, 24.29.2003, 24.29.2301, 24.29.2303, 24.29.2311, 24.29.2321, 24.29.2323, 24.29.2326, 24.29.2329, 24.29.2331, 24.29.2336, 24.29.2339, 24.29.2341, 24.29.2346, 24.29.2351, 24.29.2356, 24.29.2361, 24.29.2366, 24.29.2371, 24.29.2373, 24.29.2376, 24.29.2379, 24.29.2602, 24.29.2701, 24.29.2811, 24.29.2839, 24.29.2846, 24.29.2849, 24.29.2851, 24.29.2855, 24.29.3107, 24.29.3111, 24.29.3114, 24.29.3117, 24.29.3121, 24.29.3124, 24.29.4301, 24.29.4311, 24.29.4317, 24.29.4322, and 24.29.4329 as proposed.

7. The agency has amended ARM 24.29.801, 24.29.2614, and 24.29.4332 with the following changes, stricken matter interlined, new matter underlined:

24.29.801 ACCIDENT REPORTING (1) ~~An~~ A plan No. 1 or plan No. 2 employer shall submit the first report of injury/occupational disease form to its insurer within six days of notice of an accident, injury, or occupational disease. If a first report is improperly sent to the department, it will be forwarded to the insurer, if any.

(2) and (3) remain as proposed.

AUTH: 39-71-203, 39-71-307, MCA

IMP: 39-71-307, 39-71-603, MCA

24.29.2614 REIMBURSEMENT PROCESS –SETTLEMENTS (1) through (5) remain as proposed.

AUTH: 39-71-203, 39-71-904, MCA

IMP: 39-71-907, 39-71-908, 39-71-909, 39-71-912, 39-71-920, MCA

24.29.4332 CLAIMANT LEGAL FEES AND COSTS REPORTING REQUIREMENTS (1) through (6) remain as proposed.

(a) the total amount of legal fees paid to date by the claimant or on behalf of a claimant, including the amount of attorney fees received pursuant to a settlement; and

(b) remains as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

8. The effective date of amendments to ARM 24.29.721 is July 1, 2024.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.33.121, 24.33.135,	)	REPEAL
24.33.142, and 24.33.151 and the	)	
repeal of ARM 24.33.111 and	)	
24.33.131 pertaining to construction	)	
contractors	)	

TO: All Concerned Persons

1. On March 22, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-33-415 regarding the public hearing on the proposed changes to the above-stated rules, at page 507 of the 2024 Montana Administrative Register, Issue No. 6.

2. On April 12, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.33.121, 24.33.135, 24.33.142, and 24.33.151 as proposed.

4. The agency has repealed ARM 24.33.111 and 24.33.131 as proposed.

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor

Rule Reviewer

/s/ SARAH SWANSON

Sarah Swanson, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 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 rural emergency )  
hospitals )

TO: All Concerned Persons

1. On February 23, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1047 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 321 of the 2024 Montana Administrative Register, Issue Number 4.

2. The department has adopted the above-stated rule as proposed: NEW RULE I (37.106.901).

3. No comments or testimony were received.

4. The department intends to apply this rule adoption retroactively to October 1, 2023.

/s/ Greg Henderson  
Greg Henderson  
Rule Reviewer

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

Certified to the Secretary of State April 30, 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 November 17, 2023, through April 26, 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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8-99-209      Administration of the Economic Impact and Destination Event Grant Program, p. 99, 462  
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