MONTANA ADMINISTRATIVE REGISTER

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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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9000.

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BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to MDT Employee Grievance Procedures	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 16, 2020, the Department of Transportation proposes to adopt the above-stated rule.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on June 5, 2020, to advise us of the nature of the accommodation that you need. Please contact Alice Flesch, ADA Coordinator, Department of Transportation, P.O. Box 2001001, Helena, Montana, 59620-1001; telephone (406) 444-9229; fax (406) 444-7685; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail aflesch@mt.gov.

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

NEW RULE I EMPLOYEE GRIEVANCE PROCEDURES (1) The Department of Transportation adopts and incorporates by reference the Department of Administration's employee grievance procedural rules ARM 2.21.8010 through 2.21.8030.

(2) Department of Transportation employees who have attained permanent status may file a grievance only as provided in ARM 2.21.8010 through 2.21.8030 unless the employee is covered by an exclusive grievance procedure provided under a collective bargaining agreement or a statutory grievance procedure.

(3) A copy of the Department of Administration's employee grievance procedural rules may be obtained on the Department of Transportation website at www.mdt.mt.gov.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

REASON: Proposed New Rule I is necessary to comply with the 2-18-102, MCA requirement that each state agency must adopt effective employee grievance procedures, which MDT proposes to do through adoption of the Department of Administration's existing employee grievance procedural rules. Proposed New Rule I is necessary to provide minimum standards for the procedure to be used to resolve grievances filed by eligible employees and establish an internal grievance procedure

consistent with all steps contained in the Department of Administration's grievance rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Elisa Schock, Human Resources and Occupational Safety Division, Montana Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6054; fax (406) 444-7685; or e-mail eschock@mt.gov, and must be received no later than 5:00 p.m., June 12, 2020.

5. If persons who are directly affected by the proposed action 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 the contact person at the above address no later than 5:00 p.m., June 12, 2020.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, 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 50 persons based on 500 non-union MDT employees or managers.

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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

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

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

11. With regard to the requirements of 2-15-142, MCA, the department has determined the adoption of the above-referenced rule will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State May 5, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposal of ARM 32.3.433 designated surveillance area	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on June 8, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

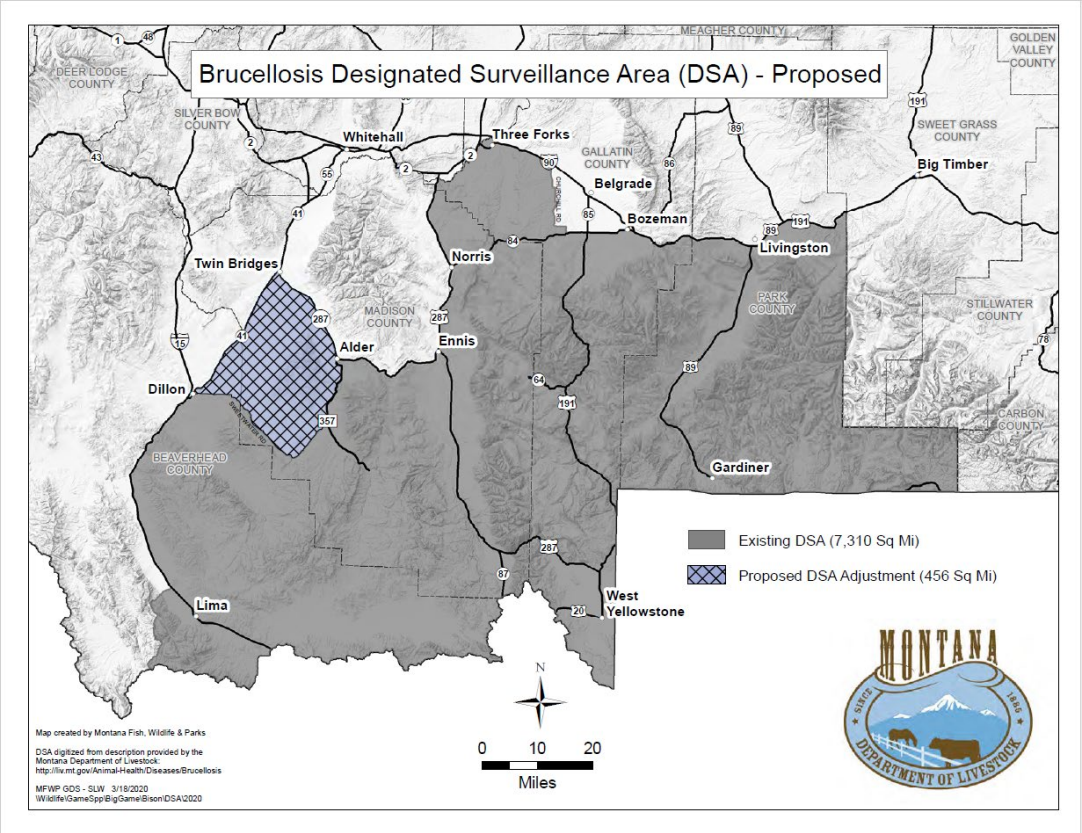
32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(b) remain the same.

(c) Madison County – east of Highway 287 from its northern crossing of the Gallatin-Madison County line to Ennis, then south of State Highway 287 from Ennis to Alder, then west of Highway 287 to Twin Bridges, then east of Montana Highway 41 ~~east of State Rd. 357 (Upper Ruby Road) to Sweetwater Road, then south of Sweetwater Road~~ to the Madison-Beaverhead County line; and

(d) Beaverhead County – from Madison-Beaverhead County line, east of Montana Highway 41 ~~south of Sweetwater Road to East Bench Road near Dillon, then south of East Canal Bench Road to White Lane, then south of White Lane to Blacktail Road, then south of Blacktail Road to Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop~~ to Interstate 15, then east of Interstate 15, to Big Sheep Creek Road at Dell, then east of Big Sheep Creek Road to Deadwood Gulch Road (BLM Road 1869), then east of Deadwood Gulch Road to Forest Road 8273, then east of Forest Road 8273 to Forest Road 1033, then east of Forest Road 1033 to the West Fork of Little Sheep Creek, then east of the West Fork of Little Sheep Creek to the headwaters north of Round Timber Spring to the Montana/Idaho border.

(2) A map of the designated surveillance area follows:

[The following map shows the proposed boundary addition. Our prior map without the proposed addition is being stricken.]



AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, MCA

Reason: Following the discovery of brucellosis exposed elk in the Ruby Mountains, the department proposes a Designated Surveillance Area (DSA) boundary change to include cattle and domestic bison that could be exposed in the area into the program and its livestock surveillance and identification requirements.

Due to the potential of livestock exposure to *Brucella abortus,* to help protect Montana livestock producers and its trading partners, and to maintain the marketability of Montana's livestock, inclusion of this area through a DSA boundary change is necessary.

The department also proposes to correct the road name in southern Beaverhead County for clarity.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., June 18, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., June 18, 2020.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Those directly affected has been determined to be 7, based on 71 producers in the area.

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 4 above or may be made by completing a request form at any rules hearing held by the department.

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.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State May 5, 2020.

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

In the matter of the amendment of ARM 37.85.104, 37.85.105, and 37.85.106 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 4, 2020, 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. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mtgov.zoom.us/j/96951987925?pwd=OWdKVFJzYnBaZm9YZk5OeXZ1d1o0dz09, meeting ID: 969 5198 7925, password: 491848;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 969 5198 7925, password: 491848; find your local number: https://mt-gov.zoom.us/u/ajQrLXmNG; or

(c) Join by Skype for Business https://mt-gov.zoom.us/skype/96951987925.

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 28, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

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

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~July 1, 2019~~ July 1, 2020.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~July 1, 2019~~ July 1, 2020.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~July 1, 2019~~ July 1, 2020.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~October 1, 2019~~ July 1, 2020.

(2) remains the same.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~83 Federal Register 226, page 59452 (November 23, 2018)~~ 84 Federal Register 221, page 62568 (November 12, 2019) effective ~~January 1, 2019~~ January 1, 2020 which is adopted and incorporated by reference. Procedure codes created after January 1, 2020 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2020~~ July 1, 2020. The conversion factor for physician services is ~~$38.46~~ $39.51. The conversion factor for allied services is ~~$23.97~~ $24.66. The conversion factor for mental health services is ~~$23.36~~ $23.40. The conversion factor for anesthesia services is ~~$30.03~~ $30.57.

(c) remains the same.

(d) The BCBA/BCBA-D services policy adjuster is 105% effective July 1, 2020.

~~(d)~~ (e) The payment-to-charge ratio is effective ~~July 1, 2018~~ July 1, 2020 and is ~~47%~~ 45.2% of the provider's usual and customary charges.

(e) through (g) remain the same but are renumbered (f) through (h).

~~(h)~~ (i) Optometric services receive a ~~117.26%~~ 117.50% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2019~~ July 1, 2020.

(i) remains the same but is renumbered (j).

~~(j)~~ (k) Reimbursement for vaccines described at ARM 37.86.105 is effective ~~July 1, 2019~~ July 1, 2020.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) remains the same.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in Federal Register Volume ~~83, Issue 225, page 58818 (November 21, 2018)~~ 84, Issue 218, page 61142 (November 12, 2019), effective ~~January 1, 2019~~ January 1, 2020, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

(ii) remains the same.

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~37.30%~~ 48%; and

(iv) remains the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2020~~ July 1, 2020.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2019~~ 2020 resulting in a dental conversion factor of ~~$34.09~~ $34.71 and fee schedule is effective ~~January 1, 2020~~ July 1, 2020.

(e) remains the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~July 1, 2019~~ July 1, 2020:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~$2.32~~ $2.23 and the maximum is ~~$15.14~~ $15.42;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~$2.32~~ $2.23 and the maximum is ~~$13.12~~ $13.36; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~$2.32~~ $2.23 and the maximum is ~~$11.10~~ $11.30.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be $21.32 for the first vaccine and ~~$14.08~~ $14.34 for each additional administered vaccine, effective ~~July 1, 2019~~ July 1, 2020.

(i) remains the same.

(j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2019~~ July 1, 2020.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2020~~ July 1, 2020, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2020~~ July 1, 2020. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2020~~ July 1, 2020.

(l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.

(m) remains the same.

(n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.

(o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2019~~ July 1, 2020.

(p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2019~~ July 1, 2020.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2020~~ July 1, 2020.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2019~~ July 1, 2020.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2019~~ July 1, 2020.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2020~~ July 1, 2020.

(u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2019~~ July 1, 2020.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2020~~ July 1, 2020.

(w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2019~~ July 1, 2020.

(x) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2019~~ July 1, 2020.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2019~~ July 1, 2020.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2020~~ July 1, 2020.

(aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2019~~ July 1, 2020.

(b) The home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2019~~ July 1, 2020.

(c) The personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2019~~ July 1, 2020.

(d) The self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2019~~ July 1, 2020.

(e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2019~~ July 1, 2020.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2019~~ July 1, 2020.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2019~~ July 1, 2020.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~October 1, 2019~~ July 1, 2020.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2019~~ July 1, 2020.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402

37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains the same.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective ~~March 1, 2020~~ July 1, 2020, for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) through (3) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement which are necessary for the purposes of the Medicaid program. In establishing the proposed rates of reimbursement, the department considered as primary factors the availability of funds appropriated by the Montana Legislature during the 2019 regular legislative session, the actual cost of services, and the availability of services.

The purpose of the proposed rule amendments is to:

(1) incorporate legislatively appropriated provider rate increases with an effective date of July 1, 2020;

(2) incorporate the July 1, 2020 RBRVS changes;

(3) incorporate the physician conversion factor as provided in 53-6-125, MCA;

(4) revise fee schedules;

(5) update federal register references for the RBRVS and Outpatient

Prospective Payment System payment methodologies; and

(6) update the outpatient cost-to-charge ratio.

Proposed Provider Rate Increases

The department is proposing provider rate increases effective July 1, 2020, for most Medicaid and non-Medicaid provider rates in accordance with the funding appropriated by the Montana Legislature during the 2019 regular session.

This rule will implement the legislatively appropriated provider rate increases for the Big Sky Waiver program, effective July 1, 2020. This fee increase will include a 1.83% increase in provider rates for the Big Sky Waiver services with the exception of transportation miles and assisted living facility residential habilitation services. The rate for transportation miles has been set in accordance with the State Plan Medicaid rate. For both the Big Sky Waiver and the Severe and Disabling Mental Illness waiver, the rate for assisted living facility residential habilitation services remains unchanged from the October 1, 2019, rate increase provided under MAR Notice No. 37-898.

Resource-Based Relative Value Scale (RBRVS) Methodology Summary

Many Montana Medicaid providers' rates are established through the resource-based relative value scale (RBRVS) model. RBRVS is used nationwide by most health plans, including Medicare and Medicaid to establish Montana Medicaid provider rates. The relative value unit component of RBRVS is revised annually by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA). The department annually proposes to amend ARM 37.85.105 to adopt the recently revised relative value units (RVUs). An RVU is a numerical value assigned to each medical procedure. RVUs are based on physician work, practice expense, and malpractice insurance expenses, and RVUs express the relative effort and expense expended to provide one procedure compared with another. In the annual revision of RVUs, CMS and the AMA add RVUs for new procedures and increase or decrease RVUs of particular procedures, depending on the factors listed above.

"Conversion factor" (CF) means a dollar amount by which RVUs are multiplied to establish the RBRVS fee for a service. The department annually calculates conversion factors for allied services, mental health services, and anesthesia services taking into consideration the changes to RVUs and appropriations.

For allied health services, mental health services, and anesthesia services, the conversion factors were calculated to provide for an overall increase of 1.83%. In addition, the optometric rate of reimbursement was increased to 117.50% to increase the optical service reimbursement by 1.83%.

A BCBA and BCBA-D services policy adjustor of 105% is proposed to increase reimbursement for autism state plan services by 1.83%.

Physician Conversion Factor

Section 53-6-125, MCA, directs the department to increase the physician's conversion factor by the consumer price index (CPI) for medical care for the previous year.

For the fiscal year beginning July 1, 2020, 53-6-125, MCA, directs the department to reduce general fund expenditures for physicians by $400,000 to fund the Health Information Exchange. After applying the federal match, the total expenditure reduction calculated to $1,150,086.

The changes to the physician conversion factor were completed in two steps, first applying the annual CPI increase and then applying the reduction associated with HB 669. These changes were applied multiplicatively resulting in a proposed physician conversion factor of $39.51.

Fee Schedules

The department is proposing the adoption of fee schedules effective July 1, 2020. The fee schedules incorporate changes due to the proposed amendments within this rulemaking.

The department has posted proposed fee schedules at http://medicaidprovider.mt.gov/proposedfs.

Federal Register Updates

Effective July 1, 2020, the department is proposing to adopt the January 1, 2020, federal register references for the RBRVS and Outpatient Prospective Payment System reimbursement methodologies. These updates are necessary to incorporate the most up-to-date changes made by CMS.

Outpatient Cost-to-Charge Ratio

The Outpatient Cost-to-Charge ratio is proposed to increase to 48% from 37.50%. This percentage is calculated utilizing the average cost-to-charge ratio from the Cost Reports for Prospective Payment System Hospitals.

Fiscal Impact

Provider type	SFY 2021 Budget Impact (State Funds)	SFY 2021 Budget Impact (Federal Funds)	SFY 2021 Budget Impact (Total Funds)	Active Provider Count
Ambulance	40,301	147,608	187,909	196

Audiologist	1,040	2,506	3,546	76
Targeted Case Management - Mental Health	65,253	147,086	212,339	21
Targeted Case Management - High Risk Pregnancy	553	1,138	1,691	18
Chemical Dependency Clinic	51,748	311,853	363,601	46
Chiropractor	239	447	686	112
Community First Choice	203,763	510,442	714,205	70
Dental	346,417	920,263	1,266,680	648
Denturist	13,877	50,915	64,792	17
EPSDT	4,540	10,110	14,650	146
Hearing Aid Dispenser	1,242	3,003	4,245	35
Home & Comm Based Services	43,182	80,885	124,067	528
Home Health Agency	3,200	5,924	9,124	25
Home Infusion Therapy	8,943	26,471	35,414	17
Independent Diagnostic Testing Facility	5,384	20,694	26,078	23
Laboratory	62,968	319,040	382,008	170
Licensed Professional Counselor	123,538	376,370	499,908	966
Mental Health Center	160,408	362,376	522,784	29
Mid-Level Practitioner	120,009	272,259	392,268	5,101
Mobile Imaging Service	38,002	339,542	377,544	1
Nutritionist/Dietitian	644	1,419	2,063	114

Occupational Therapist	25,868	53,766	79,634	262
Optician	727	2,220	2,947	29
Optometrist	32,006	100,578	132,584	236
Orientation and Mobility	1,228	2,296	3,524	4
Personal Care Agency	3,324	6,701	10,025	70
Personal Care Agency Adult MH	109	207	316	70
Pharmacy Dispensing Fee	143,755	525,118	668,873	455
Physical Therapist	33,639	132,746	166,385	883
Physician	471,769	1,623,368	2,095,137	12,260
Podiatrist	7,082	26,215	33,297	76
Private Duty Nursing Agency	30,165	56,292	86,457	4
PRTF	98,943	198,107	297,050	19
Psychiatrist	26,522	83,017	109,539	200
Psychologist	8,220	26,157	34,377	319
Social Worker	76,607	238,986	315,593	795
Speech Pathologist	24,830	49,073	73,903	253
Personal and Commercial Transportation	1,589	3,502	5,091	13
Therapeutic Family Care	24,104	48,940	73,044	14
Therapeutic Group Home	138,954	265,507	404,461	21
Transportation Non-Emergency	89	174	263	7

The proposed rulemaking is estimated to affect 237,314 Medicaid members. In addition, it will impact the provider populations outlined in the tables above.

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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 12, 2020.

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 or may be made by completing a request form at any rules hearing held by the department.

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 significantly and directly impact small businesses.

10. 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/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

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

In the matter of the amendment of ARM 37.27.902 and 37.88.101 pertaining to Medicaid and non-Medicaid manual updates	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 5, 2020, 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. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, 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/93784734510?pwd=WUw4ZDF6d2ptdWRjS3JYanc1RDV0dz09, meeting ID: 937 8473 4510, password: 911185;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 937 8473 4510, find your local number: https://mt-gov.zoom.us/u/ajQrLXmNG; or

(c) Join by Skype for Business https://mt-gov.zoom.us/skype/93784734510.

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 28, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

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

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

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2019~~ July 1, 2020, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive

and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at http://dphhs.mt.gov/amdd.aspx.

(3) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~July 1, 2019~~ July 1, 2020, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at http://dphhs.mt.gov/amdd.aspx.

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

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

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~October 1, 2019~~ July 1, 2020, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at http://dphhs.mt.gov/amdd.aspx.

(3) through (5) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902 and 37.88.101.

Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual) in ARM 37.27.902 and 37.88.101

In collaboration with the Behavioral Health Alliance of Montana, the department proposes changes to the Program for Assertive Community Treatment and the Adult Mental Health Group Home service to enhance the quality of specialty community based services provided to adults with severe and disabling mental illness and to address social determinants of health, while ensuring a fiscally sound program. In addition, the proposed program amendments incorporate case management into two

intensive community-based service bundles while also addressing the need for services in frontier and rural areas.

The department proposes changes to the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (manual) to effectuate the changes. The proposed rule amendments adopt and incorporate the manual into the administrative rules, effective on July 1, 2020.

In addition to the programmatic changes, the department is proposing cleanup of the manual including updating language, revising formatting, and introducing an updated format for ease of reading.

The proposed amendments to the manual are as follows:

1. Expansion of a new service. The department is proposing to revise the current Program of Assertive Community Treatment (PACT) to a three-tier model that will expand access to PACT services for the Severe and Disabling Mental Illness (SDMI) population across the State of Montana to support transitions between Montana State Hospital, crisis services, and community based mental health services. The tiers of the program include:
    a. Community Maintenance Program
    b. PACT
    c. Intensive PACT
2. Addition of a new service. The department is proposing the addition of a new service, Stand Alone Community Maintenance Program, that will expand access to assertive community treatment services for the SDMI population across the State of Montana to support transitions between PACT and lower levels of community-based services.
3. Removal of Intensive Community Based Rehabilitation. This service has been moved to the 1915(c) Home and Community Based Services, Severe and Disabling Mental Illness waiver program as a habilitation service to recognize the needs of adults with SDMI who need long term services and supports.
4. Replace Adult Group Home with Behavioral Health Group Home to provide structured rehabilitation in order to support members' recovery in the least restrictive level of care. This service incorporates peer support and case management as well as skills-based intervention and behavioral modification.
5. Clarification language added to Crisis Stabilization Program title and description. Language was added to differentiate between two services offered through this program. The services are 24-hour inpatient crisis stabilization and up to 23-hour 59-minute outpatient crisis stabilization. These changes have been made to reflect current terminology and to align with usage and fee schedule language.
6. Addition of definitions. Definitions added for "Targeted Case Management," "Tenancy Services," and "Licensure Candidate."
7. Provide clarifying language and sections added for organization. Clarification language added to better serve the needs of the members and to align with Other Rehabilitative Services State Plan and fee schedule language.

8. Updated Utilization Review (UR) information. Updated information to reflect changes in UR processes.

These proposed amendments are necessary to enact the program changes to the Montana Medicaid benefit plan, which will provide adults with SDMI greater access to appropriate care and to update utilization review due to the implementation of a new department-wide utilization review contractor effective January 1, 2020.

Addictive and Mental Disorders Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Non-Medicaid Manual) in ARM 37.27.902.

The department proposes to amend the Non-Medicaid Manual in ARM 37.27.902 for general housekeeping to update language and revise formatting. The rule to be amended adopts and incorporates the manual into the administrative rules, and the manual will be dated and effective on July 1, 2020.

Removal of Substance Use Disorder (SUD) Special Projects. The department proposes to remove the SUD, Special Projects from the manual. The program is now managed through contract with providers that offer the service. Providers wishing to participate in the SUD, Special Projects program submit an application for funding to the department for approval. The proposed rule amendment will eliminate redundancy between the contract process and administrative rule.

Fiscal Impact

This proposed rule amendment has a fiscal impact of $3,534,500 in state fiscal year (SFY) 2021 and $5,575,600 in SFY 2022 for the changes related to the Program of Assertive Community Treatment redesign and the amendment of Adult Group Home to Behavioral Health Group Home as provided by Mental Health Centers. There are 29 active Mental Health Centers enrolled in the Montana Medicaid program. The proposed fee schedules in ARM 37.85.104 and 37.85.105, in MAR Notice No. 37-916, reflects the changes associated with these proposed program amendments.

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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 12, 2020.

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 or may be made by completing a request form at any rules hearing held by the department.

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 significantly and directly impact small businesses.

10. 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/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

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

In the matter of the adoption of New Rules I through XV, the amendment of ARM 37.90.401, 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.410, 37.90.412, 37.90.413, 37.90.415, 37.90.416, 37.90.417, 37.90.420, 37.90.425, 37.90.430, 37.90.431, 37.90.438, 37.90.447, 37.90.448, 37.90.449, and 37.90.450, and the repeal of ARM 37.90.428, 37.90.429, 37.90.432, 37.90.436, 37.90.437, 37.90.440, 37.90.441, 37.90.442, 37.90.445, 37.90.446, 37.90.460, and 37.90.461, pertaining to Home and Community Based Services for Adults with Severe and Disabling Mental Illness	))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 5, 2020, at 9:30 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, 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/97954506622?pwd=ZEhxdFVZSW5EREVEd1poeFdGY1c2dz09, meeting ID: 979 5450 6622, password: 649201;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 979 5450 6622, password: 649201, find your local number: https://mt-gov.zoom.us/u/ajQrLXmNG; or

(c) Join by Skype for Business https://mt-gov.zoom.us/skype/97954506622.

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 28, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

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

NEW RULE I HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SEVERE AND DISABLING MENTAL ILLNESS CRITERIA (1) A member has a severe and disabling mental illness if the member:

(a) has been involuntarily committed to the Montana State Hospital or the Montana Mental Health Nursing Care Center for at least 30 consecutive days in the previous 12 months; or

(b) is 18 years of age or older and:

(i) has a minimum of two areas of high-level impairment as measured by a score of three or higher on the Severe and Disabling Mental Illness, Home and Community Based Waiver, Evaluation and Level of Impairment form; and

(ii) is diagnosed with one of the following diagnoses, excluding mild or not otherwise specified:

(A) Schizophrenia, paranoid type;
(B) Schizophrenia, disorganized type;
(C) Schizophrenia, catatonic type;
(D) Schizophrenia, undifferentiated type;
(E) Schizophrenia, residual type;
(F) Delusional disorder;
(G) Schizoaffective disorder;
(H) Schizoaffective disorder, depressive type;
(I) Bipolar I disorder, manic, moderate;
(J) Bipolar I disorder, manic, severe without psychotic features;
(K) Bipolar I disorder, manic, severe with psychotic features;
(L) Bipolar I disorder, depressed, moderate;
(M) Bipolar I disorder, depressed, severe without psychotic features;
(N) Bipolar I disorder, depressed, severe with psychotic features;
(O) Bipolar I disorder, mixed, moderate;
(P) Bipolar I disorder, mixed, severe without psychotic features;
(Q) Bipolar I disorder, severe with psychotic features;
(R) Major depressive disorder, single, moderate;
(S) Major depressive disorder, single, severe without psychotic features;
(T) Major depressive disorder, single, severe with psychotic features;
(U) Major depressive disorder, recurrent, moderate;
(V) Major depressive disorder, recurrent, severe without psychotic features;
(W) Major depressive disorder, recurrent, severe with psychotic features;
(X) Post traumatic stress disorder, acute;
(Y) Post traumatic stress disorder, chronic;
(Z) Panic disorder with agoraphobia;
(AA) Panic disorder without agoraphobia;
(AB) Borderline personality disorder;
(AC) Dissociative amnesia disorder;
(AD) Dissociative fugue disorder;
(AE) Dissociative stupor disorder; and

(AF) Dissociative identity disorder.

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: ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS (1) Environmental accessibility adaptations are modifications to a member's home that are necessary to increase accessibility, independence, and prevent the need for a higher level of care.

(2) The member's need for the adaptation must be documented by an individual with the appropriate licensure, certification, or experience with home modification to document the member's need for the adaptation to increase accessibility, independence, and prevent the need for a higher level of care.

(3) The provision of environmental accessibility adaptations may include the provision of consultation regarding the appropriateness of the equipment or supplies.

(4) The waiver program does not cover:

(a) additions to the square footage of the home;

(b) services that are for comfort or convenience;

(c) services that are not a direct and specific benefit for the member; and

(d) services that are for maintenance, repair, or building code compliance that is the responsibility of the homeowner.

(5) Environmental accessibility adaptations must:

(a) ensure the health, welfare, and safety of the member in their home; and

(b) allow the member to function with greater independence in their home.

(6) Environmental accessibility adaptations must be provided in accordance with applicable state and local building codes by individuals licensed through the Montana Department of Labor and Industry to do home modifications.

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

NEW RULE III 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.

(2) Services may be directed by:

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

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

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

(3) The person directing the services must:

(a) be 18 years of age or older;

(b) successfully complete required training for self-direction; and

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

(4) The case management teams must:

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

(b) assist the member to develop an emergency backup plan, identifying and mitigating risks or potential risks, and monitor the health and safety of the member.

(5) Members must:

(a) be capable of making choices about activities of daily living, understand the impact of their choices, and assume responsibility for those choices;

(b) be capable of managing all tasks related to service delivery including recruiting, hiring, scheduling, training, directing, and dismissal of attendants; and

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

(6) The provider agency must:

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

(b) assist with recruiting, interviewing, hiring, training, managing, paying, and dismissing workers; and

(c) monitor health and welfare of the member.

(7) Self-directed services can be terminated when:

(a) the 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 member; and

(c) a corrective action does not improve the situation.

(8) The member must be informed in writing of the plan to transfer to an agency-based service delivery.

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

NEW RULE IV HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESIDENTIAL HABILITATION, ASSISTED LIVING (1) Residential habilitation, assisted living, provides 24-hour services and supports designed to ensure the health, safety, and welfare of a member and assist the member acquiring and improving behaviors necessary to live and participate in the community.

(2) Assisted living facilities must be licensed in accordance with ARM Title 37, chapter 106, subchapter 28.

(3) Assisted living includes the following service components:

(a) personal care;

(b) social and recreational activities;

(c) medication management and oversite;

(d) medical escort;

(e) non-medical transportation;

(f) meals; and

(g) 24-hour onsite awake staff.

(4) A provider of adult residential care must report serious occurrences, as defined in ARM 37.90.403, to the department.

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

NEW RULE V HOME AND COMMUNITY BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESIDENTIAL HABILITATION, INTENSIVE MENTAL HEALTH GROUP HOME (1) Residential habilitation, intensive mental health group home, provides 24-hour care designed to ensure the health, safety, and welfare of a member and provide supervision for the member to live and participate in the community.

(2) Intensive mental health group homes must be licensed in accordance with ARM Title 37, chapter 106, subchapter 19.

(3) Only the Montana State Hospital, the Montana Mental Health Nursing Care Center, or the Addictive and Mental Disorders Division may refer a member for intensive mental health group home services under the waiver program.

(4) An intensive mental health group home must:

(a) be a licensed mental health center with a group home endorsement;

(b) be approved by the Addictive and Mental Disorders Division; and

(c) be knowledgeable about commitment and recommitment processes, as well as the process for use of involuntary medications.

(5) Intensive mental health group homes consist of the following staff:

(a) a program supervisor, .5 FTE, who provides clinical supervision as described in the member's Person-Centered Recovery Plan;

(b) a residential manager, 1.0 FTE; and

(c) 24 hour onsite awake staff with at least a 1:3 staffing ratio for at least 16 hours per day during awake hours and at least one staff for eight hours during sleeping hours, as determined by the provider.

(6) The member must:

(a) have a history of repeated unsuccessful placements in less intensive community-based programs;

(b) have at least one full year combined of institutionalization within the past three years; and

(c) exhibit an inability to perform activities of daily living in an appropriate manner due to the member's Severe and Disabling Mental Illness (SDMI) diagnosis.

(7) Intensive mental health group homes must offer the following service components:

(a) assistance with activities of daily living and instrumental activities of daily living, as needed;

(b) medication management, administration, and oversite;

(c) medical escort;

(d) crisis stabilization services as needed by the member;

(e) close supervision and support of daily living activities;

(f) access to community involvement;

(g) care coordination;

(h) discharge planning; and

(i) transportation and supervision, if appropriate, to suitable community resources.

(8) A provider of adult residential care must report serious occurrences, as defined in ARM 37.90.403, to the department.

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

NEW RULE VI HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESIDENTIAL HABILITATION, MENTAL HEALTH GROUP HOME (1) Residential habilitation, mental health group home, provides 24 hours of available services and supports designed to ensure health, safety, and welfare of a member and assist the member in the acquisition and improvement of behaviors necessary to live and participate in the community.

(2) A mental health group home must be a licensed mental health center with a group home endorsement.

(3) Mental health group homes consist of the following staff:

(a) a program supervisor, .5 FTE, who provides clinical supervision as determined in the member's Person-Centered Recovery Plan;

(b) a residential manager, 1.0 FTE; and

(c) 24-hour onsite awake staff with a minimum 1:4 staffing ratio for at least 16 hours per day during awake hours and at least one staff for eight hours during sleeping hours, as determined by the provider.

(4) The member must have:

(a) a history of repeated unsuccessful placements in less intensive rehabilitative community-based programs;

(b) impaired interpersonal or social functioning;

(c) impaired occupational functioning;

(d) impaired judgment;

(e) poor impulse control; or

(f) a lack of family or other community or social supports.

(5) The member must exhibit:

(a) an inability to perform activities of daily living in an appropriate manner due to the member's SDMI diagnosis; and

(b) symptoms related to the SDMI severe enough that a less intensive level of service would be insufficient to support the member in an independent living environment and requires a structured treatment environment to be successfully treated in a less restrictive setting.

(6) Mental health group homes must offer the following service components:

(a) assistance with activities of daily living and instrumental activities of daily living as needed;

(b) medication management, administration, and oversite as needed;

(c) medical escort;

(d) crisis stabilization services as needed by the member;

(e) supervision and support of daily living activities;

(f) assistance with medications, including administration of medications as necessary;

(g) skills building in areas of community reintegration and independent living;

(h) care coordination;

(i) discharge planning for transition to a less restrictive setting; and

(j) transportation and supervision, if appropriate, to suitable community resources.

(7) A provider of adult residential care must report serious occurrences, as defined in ARM 37.90.403, to the department.

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

NEW RULE VII HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESIDENTIAL HABILITATION, ADULT GROUP HOME (1) Residential habilitation, adult group home, provides 24-hour available services and supports designed to ensure health, safety, and welfare of a member and assist the member in the acquisition and improvement of behaviors necessary to live and participate in the community.

(2) An adult group home must be provided in the setting as defined in ARM Title 37, chapter 88, subchapter 9.

(3) Placement in an adult group home must be supported by the member's level of impairment and strengths assessment found in the Person-Centered Recovery Plan.

(4) Adult group home is a bundled service that includes:

(a) personal care;

(b) homemaker services;

(c) social activities;

(d) recreational activities;

(e) medication management and oversite;

(f) medical escort;

(g) nonmedical transportation; and

(h) 24-hour onsite awake staff to meet the needs of the members and provide supervision for safety and security.

(5) Members in an adult group home may not receive the following services under the Home and Community Based Services, Adults with Severe and Disabling Mental Illness Waiver Program:

(a) personal assistance;

(b) homemaker chore;

(c) respite care;

(d) environmental accessibility adaptations; or

(e) meals.

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

NEW RULE VIII HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESIDENTIAL HABILITATION, FOSTER CARE (1) Residential habilitation, foster care, provides 24-hour services and supports designed to ensure the health, safety, and welfare of

a member and assist the member in acquiring and improving behaviors necessary to live and participate in the community.

(2) Residential habilitation, foster care, must be licensed in accordance with ARM Title 37, chapter 106, subchapter 20.

(3) Residential habilitation, foster care, includes the following components:

(a) personal care;

(b) social activities;

(c) recreational activities;

(d) medication management and oversite;

(e) medical escort;

(f) nonmedical transportation;

(g) meals; and

(h) 24-hour on-site supervision to meet the needs of the member for safety and security.

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

NEW RULE IX 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 available in the waiver and state plan are insufficient in meeting the needs of the member due to challenging behaviors and assistance is required to improve or restore function in activities of daily living (ADL), instrumental activities of daily living (IADL), or social and adaptive skills.

(2) Behavioral intervention assistant service is provided by entities that are licensed and insured to deliver personal care services.

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

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

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

NEW RULE X HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: HOMEMAKER CHORE

(1) Homemaker chore services are extensive cleaning beyond the scope of general household cleaning under Community First Choice/Personal Assistance Service (CFC/PAS) state plan and is needed to return a residence to a sanitary and safe environment.

(2) Homemaker chore may be provided by:

(a) entities that provide deep cleaning, yard, trash removal, and moving services;

(b) home health providers; and

(c) CFC/PAS providers.

(3) Homemaker chore is provided when neither the member nor other community resources are available to provide the service.

(4) Moving expenses must be prior authorized by the department.

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

NEW RULE XI HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PAYEE (1) A payee is an individual or organization that accepts monetary or benefit payments on behalf of a member and expends the funds to pay for the current and future needs of the member.

(2) Payee services may be provided by public agencies, nonprofit organizations, banks, or fiscal management agencies that are licensed and insured.

(3) A payee must:

(a) determine the needs of the member and use the money or benefits to meet those needs;

(b) save any money left after meeting the member's current needs in an interest-bearing account or savings bonds for the member's future needs;

(c) provide all records of how payments are spent or saved to the member upon request; and

(d) complete reports accounting for the use of the member's money or benefits.

(4) Payee services are duplicative of representative, organizational, or individual payee services appointed by the Social Security Administration.

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

NEW RULE XII HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CONSULTATIVE CLINICAL AND THERAPEUTIC SERVICES (1) Consultative clinical and therapeutic services provide comprehensive expertise, training, and technical assistance to improve the ability of providers and caregivers to carry out therapeutic interventions and reduce challenges that may be interfering with a member's daily functioning, independence, and quality of life.

(2) Consultative clinical and therapeutic services include:

(a) a clinical/functional evaluation;

(b) implementation of positive behavioral supports as part of the member's Person-Centered Recovery Plan (PCRP);

(c) training and technical assistance for the member's paid and non-paid caregivers to implement the positive behavioral supports; and

(d) monitoring the member's response to the positive behavioral supports and updating the PCRP if necessary.

(3) Consultative clinical and therapeutic services must meet a documented behavioral need that cannot be addressed through other waiver or state plan services.

(4) Consultative clinical and therapeutic services may be provided by a:

(a) psychiatrist;

(b) psychologist;

(c) neuropsychiatrist;

(d) licensed clinical professional counselor; or

(e) licensed clinical social worker.

(5) Training must be aimed at assisting the provider and caregiver in meeting the needs of the member and must include instruction to implement the positive behavioral supports outlined in the member's PCRP.

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

NEW RULE XIII 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 a member's overall health and well-being and addresses the obstacles that impede a member's progress towards self-sufficiency, improved health, and well-being.

(2) Life coach services may be provided by:

(a) independent living centers;

(b) home health agencies; and

(c) other entities approved by the department.

(3) Life coaches must have at least eight hours of specialized behavioral health training annually approved by the department.

(4) A member must have a SDoH assessment with identified needs and established goals in their Person-Centered Recovery Plan.

(5) Life coach services must include at least one of the following social determinants of health:

(a) economic stability;

(b) neighborhood and physical environment;

(c) education;

(d) regular and consistent access to healthy foods, education on nutrition, and overall health impacts;

(e) access to needed healthcare; and

(f) community and social context.

(6) Life coach services may not duplicate services provided under behavioral intervention assistant or payee services.

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

NEW RULE XIV HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SUPPORTED EMPLOYMENT (1) Supported employment services assist members to prepare for,

find, and keep competitive jobs that exist in the open labor market, pay at least minimum wage, and are in a variety of integrated work settings.

(2) Supported employment services are provided by public or private employment agencies, Independent Living Centers, organizations that provide support for individuals with disabilities, Mental Health Centers, or a self-employed individual with at least:

(a) an associate degree in vocational rehabilitation, career development, or disability services;

(b) an Individual Placement Services (IPS) certification; or

(c) two years of experience in vocational rehabilitation, career development, or disability services and receive an IPS certification within six months of hire.

(3) A supported employment provider must have at least eight hours of specialized behavioral health training annually approved by the department.

(4) Supported employment services are for members who have previously been unable to succeed in competitive employment due to significant disabilities or challenging behaviors and need intensive, ongoing job supports to maintain long-term employment.

(5) The need for supported employment must be documented in the member's Person-Centered Recovery Plan and individualized to meet the identified need.

(6) Supported employment may:

(a) continue for as long as the member wants and needs support; and

(b) be provided in conjunction with other employment services.

(7) Supported employment may be provided only in a competitive employment setting.

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

NEW RULE XV HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: MEALS (1) Meal service is the provision of hot or cold meals to a member up to twice daily.

(2) Meals may be provided by:

(a) a non-profit entity or public agency that provides congregate or home-delivered meals on a regular basis to individuals who are unable to gain access to meals due to age or disability;

(b) entities that provide home-delivered meals that are transported from a preparation site to the member's residence; or

(c) meal preparation entities.

(3) Members must need special assistance to ensure adequate nutrition due to:

(a) special nutritional needs; or

(b) the member's inability to gain access to proper nutrition due to a disability.

(4) The provider must follow the rules that govern the provision of meal services at ARM 37.41.306 through 37.41.315.

(5) If meals are provided during the provision of another service, the total combined meals provided to the member may not exceed two meals per day.

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

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

37.90.401 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION (1) The department has established ~~a~~ the Severe and Disabling Mental Illness, Home and Community Based Services waiver program ~~of Medicaid funded home and community-based services for persons~~ for members who have severe and disabling mental illness, as defined in ~~ARM 37.89.103~~ [NEW RULE I], and who would otherwise have to reside in and receive Medicaid reimbursed care in a nursing facility ~~or a hospital~~. ~~Upon formal approval, the department will initiate the program in accordance with the conditions of approval governing federal and state authorities and these rules.~~

(2) The department, in accordance with ~~the~~ state and federal statutes, ~~and the~~ administrative rules, ~~generally governing the provision of Medicaid funded home and community-based services, any~~ federal-state agreements ~~specifically~~ governing the provision of the Medicaid funded home and community-based services ~~to be~~ delivered under this program, and within the available funding appropriated for the program, may determine within in its discretion:

(a) the types of services ~~to be~~ available through the program;

(b) remains the same.

(c) the ~~categories of persons~~ target population to be served through the program;

(d) the total number of ~~persons~~ members who may receive services through the program;

(e) ~~the total number of persons who may receive services through the program by category of eligibility, geographical area, or specific case management team~~ delivery approach; and

(f) eligibility of ~~individual persons~~ members for the program.

(3) remains the same.

(4) ~~The state has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered to persons in the following service areas for which federal approval of coverage has been received:~~ The Severe and Disabling Mental Illness, Home and Community Based Services waiver program is referred to throughout this subchapter as "the SDMI HCBS waiver program" or "the waiver program."

~~(a) Yellowstone County Region, inclusive of the counties of Yellowstone, Big Horn, Carbon, Stillwater, and Sweet Grass;~~

~~(b) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, Toole, and Phillips;~~

~~(c) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, Powell, and Jefferson;~~

~~(d) Missoula County;~~

~~(e) Lewis and Clark County; and~~

~~(f) Flathead County Region, inclusive of the counties of Flathead, Lake, Sanders, and Lincoln.~~

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

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: ~~limited to those specified in this rule.~~

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

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

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

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

(e) consultative clinical and therapeutic services, as defined in [NEW RULE XII];

(f) environmental accessibility adaptations, as defined in [NEW RULE I];

(g) health and wellness, as defined in ARM 37.90.417;

(h) homemaker chore, as defined in ARM 37.90.437;

(i) life coach, as defined in [NEW RULE XIII];

(j) meals, as defined in ARM 37.90.446;

(k) non-medical transportation, as defined in ARM 37.90.450;

(l) pain and symptom management, as defined in ARM 37.90.416;

(m) personal assistance service, as defined in ARM 37.90.431;

(n) personal emergency response system, as defined in ARM 37.90.448;

(o) private duty nursing, as defined in ARM 37.90.447;

(p) payee, as defined in ARM 37.90.440;

(q) residential habilitation, as defined in ARM 37.90.428, 37.90.429, 37.90.432, 37.90.460, and 37.90.461;

(r) respite care, as defined in ARM 37.90.438;

(s) specialized medical equipment and supplies, as defined in ARM 37.90.449; and

(t) supported employment, as defined in ARM 37.90.445.

~~(2) The department may determine the particular services of the program to make available to a person based on, but not limited to, the following criteria:~~

~~(a) the person's need for a service generally and specifically;~~

~~(b) the availability of a specific service through the program and any ancillary service necessary to meet the person's needs;~~

~~(c) the availability otherwise of alternative public and private resources and services to meet the person's need for the service;~~

~~(d) the person's risk of significant harm or of death if not in receipt of the service;~~

~~(e) the likelihood of placement into a more restrictive setting if not in receipt of the service; and~~

~~(f) the financial costs for and other impacts on the program arising out of the delivery of the service to the person.~~

~~(3) A person enrolled in the program may be denied a particular service available through the program that the person desires to receive or is currently receiving.~~

~~(4) Bases for denying a service to a person include, but are not limited to:~~

~~(a) the person requires more supervision than the service can provide;~~

~~(b) the person's needs, inclusive of health, cannot be effectively or appropriately met by the service;~~

~~(c) access to the service, even with reasonable accommodation, is precluded by the person's health or other circumstances;~~

~~(d) a necessary ancillary service is no longer available; or~~

~~(e) the financial costs for and other impacts on the program arising out of the delivery of the service to the person.~~

~~(5) The following services, as defined in these rules, may be provided through the program:~~

~~(a) case management services;~~

~~(b) homemaking;~~

~~(c) personal assistance;~~

~~(d) adult day health;~~

~~(e) habilitation;~~

~~(f) respite care;~~

~~(g) personal emergency response systems;~~

~~(h) nutrition services;~~

~~(i) nonmedical transportation;~~

~~(j) outpatient occupational therapy;~~

~~(k) nursing;~~

~~(l) psycho-social consultation;~~

~~(m) dietetic services;~~

~~(n) adult residential care;~~

~~(o) specially trained attendant care;~~

~~(p) substance use related disorder services;~~

~~(q) specialized medical equipment and supplies;~~

~~(r) supported living;~~

~~(s) illness management and recovery services;~~

~~(t) Wellness Recovery Action Plan (WRAP) services;~~

~~(u) community transition services;~~

~~(v) health and wellness; and~~

~~(w) pain and management.~~

~~(6) Monies available through the program may not be expended on the following:~~

~~(a) room and board;~~

~~(b) special education and related services as defined at 20 USC 1401(16) and (17); and~~

~~(c) vocational rehabilitation.~~

~~(7) The program is considered the payor of last resort. A program service is not available to a person if that type of service is otherwise available to the person from another source.~~

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) "Adult residential care" means a residential habilitation option for persons residing in an adult foster home, group home, or an assisted living facility.~~

~~(2) "Case management" means a service that provides the planning for, arranging for, implementation of, and monitoring of the delivery of services available to an person through the program.~~

~~(3) "Community transitions services" means nonrecurring set-up expenses for persons who are transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses.~~

~~(4) "Habilitation" means intervention services designed to assist a person to acquire, retain, and improve the self-help, socialization, and adaptive skills necessary to reside successfully at home and in the community.~~

~~(5) "Health and wellness" means services that assist persons in acquiring, retaining, and improving self-help, socialization, and adaptive skills to reside successfully in the community.~~

~~(6) "Homemaker chore" means services provided for persons who are unable to manage their own homes, or when the person normally responsible for homemaking is absent.~~

~~(7) "Illness management and recovery (IMR)" means an evidence-based program to provide services consisting of personalized strategies for managing mental illness and achieving personal goals.~~

~~(8) "Nonmedical transportation" means transportation through common carrier or private vehicle for access to social or other nonmedical activities.~~

~~(9) "Pain and symptom management" means a service of traditional and nontraditional methods of pain management.~~

~~(10) "Personal assistant services (PAS)" is defined at 53-6-145, MCA and includes attendant PAS and socialization/supervision PAS.~~

~~(11) "Plan of care" means a written plan of supports and interventions to guide the provision of services based on an assessment of the status and needs of a consumer.~~

~~(12) "Respite care" means the provision of supportive care to a consumer to relieve those unpaid persons normally caring for the consumer.~~

(1) "Activities of daily living" means basic personal everyday activities.

(2) "Community First Choice (CFC) and Personal Assistance Service (PAS) Programs are programs designed to provide long term supportive care in a home setting.

(3) "Institutionalization" means placement in a nursing facility, a mental health nursing facility, or a state mental health hospital.

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

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

(6) "Level of impairment assessment" 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) "Mental health professional" means as defined in 53-21-102, MCA.

(9) "Quality improvement organization" means a group of health quality experts organized to improve the quality of care delivered to members.

~~(13)~~(10) "Serious occurrence" means a significant event which affects the health, welfare, and safety of a ~~person~~ member served in home and community-based services. The department has established a system of reporting and monitoring ~~serious~~ critical and non-critical incidents that involve ~~persons~~ members served by the program in order to identify, manage, and mitigate overall risk to the ~~person~~ member. For information pertaining to reporting a serious occurrence, see the SDMI HCBS Policy #305, located at: https://dphhs.mt.gov/amdd/HCBSPolicyManual.

~~(14)~~(11) "Severe and disabling mental illness" is defined in ~~ARM 37.86.3503~~ [NEW RULE I].

~~(15) "Specially trained attendant care" means an option under personal assistance that is the provision of supportive services to a person residing in their own residence.~~

~~(16) "Substance use related disorder services" means provision of counseling to a person with a substance use related disorder by a licensed addiction counselor or appropriate licensed professional.~~

~~(17) "Supported living" means the provision of comprehensive supportive services to a person residing in an individual residence or in a group living situation.~~

~~(18) "Wellness, recovery and action plan (WRAP)" means an individualized plan developed by a person to manage their mental illness. This is a tool to guide persons through the process of identifying and understanding their personal wellness resources.~~

AUTH: 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) ~~Services of the program~~ The waiver program services may only be provided by ~~or through~~ a provider that:

(a) is enrolled ~~with the department~~ as a Montana Medicaid provider; ~~or, if not an enrolled Medicaid provider, is under contract with a Medicaid provider that the department is contracting with for home and community-based case management services and that the department has authorized to reimburse non-Medicaid providers;~~

~~(b) meets all the requirements necessary for the receipt of Medicaid monies;~~

~~(c) has been determined by the department to be qualified to provide services to adults with severe disabling mental illness;~~

~~(d) is a legal entity;~~

~~(e) is appropriately insured as determined by the department; and~~

~~(f)~~ (b) meets all facility, ~~and other~~ licensing, and insurance requirements applicable to the services offered, the service settings provided, and the professionals employed~~.~~; and

(c) meets the criteria as a qualified provider authorized to deliver the service as specified in 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) ~~A recipient's immediate family members may not provide services to the recipient as a reimbursed provider or as an employee of a reimbursed provider. Immediate family members include a spouse or legal guardian.~~ 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) community transition;

(b) environmental accessibility adaptations;

(c) health and wellness;

(d) homemaker chore;

(e) meals; and

(f) specialized medical equipment and supplies.

(3) ~~A provider may also provide support to other family members in the recipient's household during hours of program reimbursed service if approved by the case management team.~~ A provider must document the completion of required training in the personnel file of the staff or in the provider's staff training files which includes:

(a) title of the training;

(b) the date of the training;

(c) name and title of the trainer;

(d) type or topic of the training;

(e) the agenda of the training;

(f) the hours of the training; and

(g) the signature and date of the staff who received the training.

(4) Providers must ensure that direct care staff are trained and capable of providing waiver program services.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.408 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: REIMBURSEMENT (1) The department adopts and incorporates by reference the Medicaid Home and Community-Based Services for Adults ~~With~~ with Severe and Disabling Mental Illness ~~Fee Schedule~~ fee schedule. ~~The provider reimbursement rate for a covered service for Home and Community-Based Services for Adults with Severe Disabling Mental Illness, unless provided otherwise in this rule, is stated in the department's fee~~

~~schedule as provided in ARM 37.85.105(5)(b).~~ Unless otherwise provided for in rule, the provider reimbursement rate for waiver program services is stated in the department's fee schedule as provided in ARM 37.85.105(5)(b). These fees are calculated based on:

(a) and (b) remain the same.

(2) ~~The following services are reimbursed as provided in (3)~~ Medicaid reimbursement for the SDMI HCBS waiver program will be the lesser of:

(a) ~~homemaking;~~ the provider's usual and customary charge for the service; or

(b) ~~adult day health;~~ the rate established in the department's Medicaid fee schedule adopted and incorporated into ARM 37.85.105(5)(b).

~~(c) habilitation;~~
~~(d) personal emergency response systems;~~
~~(e) nutrition;~~
~~(f) psycho-social consultation;~~
~~(g) nursing;~~
~~(h) dietetic services;~~
~~(i) specially trained attendant care;~~
~~(j) substance use related disorder services;~~
~~(k) supported living;~~
~~(l) adult residential care;~~
~~(m) respite care not provided by a nursing facility;~~
~~(n) nonmedical transportation;~~
~~(o) specialized medical equipment and supplies;~~
~~(p) illness management and recovery services;~~
~~(q) Wellness Recovery Action Plan (WRAP);~~
~~(r) community transition service;~~
~~(s) health and wellness; and~~
~~(t) pain and symptom management.~~

(3) ~~The services specified in (2) are, except as otherwise provided in (4), reimbursed at the lower of the following:~~ The SDMI HCBS waiver program is the payor of last resort and will not reimburse a service that otherwise is or should be paid by another source.

~~(a) the provider's usual and customary charge for the service; or~~

~~(b) the rate negotiated with the provider by the case management team up to the department's maximum allowable fee.~~

(4) ~~The services specified in (2) are reimbursed as provided in (3) except that reimbursement for components of those services that are incorporated by specific cross reference from the general Medicaid program may only be reimbursed in accordance with the reimbursement methodology applicable to the component service of the general Medicaid program.~~ The SDMI HCBS waiver program will not reimburse for services provided to individuals of a member's household or family.

~~(5) The following services are reimbursed in accordance with the referenced provisions governing reimbursement of those services through the general Medicaid program:~~

~~(a) personal assistance as provided at ARM 37.40.1105; and~~

~~(b) outpatient occupational therapy as provided at ARM 37.86.610.~~

~~(6) Case management services are reimbursed, as established by contractual terms, on either a per diem or hourly rate.~~

~~(7) Respite care services provided by a nursing facility are reimbursed at the rate established for the facility in accordance with ARM Title 37, chapter 40, subchapter 3.~~

~~(8) Reimbursement will not be paid for a service that is otherwise available from another source.~~

~~(9) No copayment is imposed on services provided through the program but persons are responsible for copayment on other services reimbursed with Medicaid monies.~~

~~(10) Reimbursement is not available for the provision of services to other members of a person's household or family unless specifically provided for in these rules.~~

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 ~~(1) The department may consider for eligibility in and may enroll in the program persons who the department determines qualify for enrollment in accordance with the criteria in ARM 37.90.410.~~

~~(2) In order to be considered by the department for eligibility in the program, a person must be determined to qualify for enrollment in accordance with the criteria in this rule.~~

~~(3)~~ (1) A ~~person~~ member is ~~qualified~~ eligible ~~to be considered~~ for enrollment in the program if the ~~person~~ member meets the following criteria:

(a) is at least 18 years of age ~~and, if under the age of 65, has been determined to be disabled according to the Social Security Administration~~;

(b) remains 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 ~~in accordance with the preadmission screening provided for in ARM 37.40.202, 37.40.205, and 37.40.206~~;

~~(d) does not currently reside in a hospital or a nursing facility;~~

~~(e) has needs that can be met through the program;~~

~~(f)~~ (d) meets the severe and disabling mental illness ~~definition~~ criteria at ~~ARM 37.89.103~~ [NEW RULE I]; 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.

~~(g) resides in one of the following service areas for which federal approval of coverage has been received:~~

~~(i) Yellowstone County Region, inclusive of the counties of Yellowstone, Big Horn, Carbon, Stillwater, and Sweet Grass;~~

~~(ii) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, Toole, and Phillips;~~

~~(iii) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, Powell, and Jefferson;~~

~~(iv) Missoula County;~~

~~(v) Lewis and Clark County; and~~

~~(vi) Flathead County Region, inclusive of the counties of Flathead, Lake, Sanders, and Lincoln.~~

(2) Once a member is found eligible to receive waiver program services, the member is referred to the appropriate case management team. The case management team:

(a) offers the member an available opening for program services if one is available; or

(b) places the member on the wait list for an available opening.

(3) A member is placed on the wait list in the service areas the member selects.

(4) ~~The department may consider for an available opening for program services a person who, as determined by the department:~~ The case management team must use the member's combined LOC and LOI score to determine the member's score for placement on the wait list.

~~(a) meets the criteria of ARM 37.90.410;~~

~~(b) is actively seeking services;~~

~~(c) is in need of the services available;~~

~~(d) is likely to benefit from the available services; and~~

~~(e) has a projected total cost of plan of care that is within the limits specified in ARM 37.90.413.~~

(5) ~~The department offers an available opening for program services to the applicant, as determined by the department, who is:~~ If more than one member has the same combined wait list score, then each member is placed on the wait list based upon the member's wait list score as determined in (4), and thereafter on a first-come, first-served basis.

~~(a) most in need of the available services;~~

~~(b) most likely to benefit from the available services; and~~

~~(c) whose projected total cost plan of care is within the applicable limits specified in ARM 37.90.413.~~

~~(6) Factors to be considered in the determination of whether a person is:~~

~~(a) in need of the available program services;~~

~~(b) likely to benefit from those services; and~~

~~(c) which person is most likely to benefit from the available services include, but are not limited to, the following:~~

~~(i) medical condition;~~

~~(ii) degree of independent mobility;~~

~~(iii) ability to be alone for extended periods of time;~~

~~(iv) presence of problems with judgment;~~

~~(v) presence of a cognitive impairment;~~

~~(vi) prior enrollment in the program;~~

~~(vii) current institutionalization or risk of institutionalization;~~

~~(viii) risk of physical or mental deterioration or death;~~

~~(ix) willingness to live alone;~~

~~(x) adequacy of housing;~~
~~(xi) need for adaptive aids;~~
~~(xii) need for 24-hour supervision;~~
~~(xiii) need of person's caregiver for relief;~~
~~(xiv) appropriateness for the person, given the person's current needs and risks, of services available through the program;~~
~~(xv) status of current services being purchased otherwise for the person; and~~
~~(xvi) status of support from family, friends, and community.~~

~~(7)~~ (6) A ~~person~~ member may be removed from the SDMI HCBS waiver program ~~by the department. Bases for removal from the program include, but are not limited to~~ for the following reasons:

(a) a determination by ~~the case management team~~ a mental health professional that the member no longer meets the eligibility criteria ~~the services, as provided for in the plan of care, are no longer appropriate or effective in relation to the person's needs~~;

(b) ~~the failure of the person to use the services as provided for in the plan of care~~ the member does not select and actively participate in at least two services in the waiver program within 45 calendar days from the date the member agrees to and signs the PCRP;

(c) ~~the behaviors of the person place the person, the person's caregivers, or others at serious risk of harm or substantially impede the delivery of services as provided for in the plan of care~~ the department determines that the member has failed to utilize or attempted to utilize at least two waiver services, in over 90 days, with repeated attempts documented by the case management team to engage the member; and

~~(d) the health of the person is deteriorating or in some other manner placing the person at serious risk of harm;~~

~~(e) a determination by the case management team that the service providers necessary for the delivery of services to the person, as provided for in the plan of care, are unavailable;~~

~~(f) a determination that the total cost of the person's plan of care is not within the limits specified at ARM 37.90.413;~~

~~(g)~~ (d) the ~~person~~ member no longer requires the level of care of a nursing facility as determined ~~in accordance with the preadmission screening provided for in ARM 37.40.202, 37.40.205, and 37.40.206;~~ by the Quality Improvement Organization under contract with the department.

~~(h) the person no longer resides in one of the counties specified in ARM 37.90.410.~~

(7) Eligibility for consideration for the waiver program does not entitle an individual 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: ~~PLANS OF CARE~~ PERSON-CENTERED RECOVERY PLAN (1) ~~A plan of care is a written plan of supports and~~

~~interventions, inclusive of personal recovery oriented goals to guide the provision of services, based on an assessment of the status and needs of a recipient. The plan of care describes the needs of the recipient and the services available through the program and otherwise that are to be made available to the recipient in order to maintain the recipient at home and in the community.~~ A Person-Centered Recovery Plan (PCRP) 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.

(2) ~~The~~ All services ~~that a recipient may receive through the program and the amount, scope, and duration of those services~~ must be specifically authorized in writing ~~through an individual plan of care for the person~~ in the member's PCRP.

(3) ~~The plan of care is initially developed upon the person's entry into the program. The plan must be reviewed and, if necessary, revised at intervals of at least six months beginning with the date of the initial plan of care.~~ Each PCRP must be developed, reviewed, and revised by the case management team. The case management team must:

(a) initiate the development of the PCRP upon the member's enrollment into the SDMI HCBS waiver program;

(b) have monthly telephone contact with the member;

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

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

(4) ~~Each plan of care is developed, reviewed, and revised by the case management team.~~ The case management team must develop the PCRP in consultation with:

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

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

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

(5) ~~The case management team, in developing the plan of care, consults with the recipient or the recipient's legal representative, with treating and other appropriate health care professionals, and others who have knowledge of the recipient's needs.~~ The PCRP must include:

(a) the primary SDMI diagnosis and any other diagnosis of the member that are relevant to the services provided;

(b) the member's symptoms, complaints, and complications indicating the need for services;

(c) the member's strengths, areas of concern, goals, objectives, and required interventions;

(d) the SMDI HCSB waiver program services that will be provided;

(e) all other services the member requires including Montana Medicaid state plan services and community-based services and supports; however, including non-program services in the PCRP 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 member's functional needs outlined in the Severe and Disabling Mental Illness, Home and Community Based Services, Evaluation and Level of Impairment form;

(g) a crisis plan;

(h) physicians' orders;

(i) a discharge plan;

(j) the projected annual cost of SDMI Home and Community-Based Services (HCBS) waiver program services provided;

(k) the signature of the member or the member's legal representative which signifies the participation in and agreement of the PCRP; and

(l) the names and signatures of all individuals who participated in the development of the PCRP which signifies the participation in and agreement of the PCRP.

~~(6) Each plan of care must include the following:~~

~~(a) diagnosis, symptoms, complaints, and complications indicating the need for services;~~

~~(b) a description of the recipient's functional level;~~

~~(c) objectives;~~

~~(d) any orders for:~~

~~(i) medication;~~

~~(ii) treatments;~~

~~(iii) restorative and rehabilitative services;~~

~~(iv) activities;~~

~~(v) therapies;~~

~~(vi) social services;~~

~~(vii) diet; and~~

~~(viii) other special procedures recommended for the health and safety of the recipient to meet the objectives of the plan of care;~~

~~(e) the specific program and other services to be provided, the frequency of the services, and the type of provider to provide them;~~

~~(f) the projected annualized costs of each program service; and~~

~~(g) names and signatures of all persons who have participated in developing the plan of care (including the recipient, unless the recipient's inability to participate is documented) which will verify participation, agreement with the plan of care, and acknowledgement of the confidential nature of the information presented and discussed.~~

~~(7) Inclusion of the need for and the identification of nonprogram services in the plan of care does not financially obligate the department to fund those services or to assure their delivery and quality.~~

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

~~(9) Plan of care approval is based on:~~

~~(a) completeness of plan;~~

~~(b) consistency of plan with the needs of the person; and~~

~~(c) feasibility of service provision, including cost-effectiveness of plan as provided for in ARM 37.90.413; and~~

~~(d) the conformance of the plan with ARM 37.90.401, 37.90.402, 37.90.406, 37.90.408, 37.90.410, 37.90.412, 37.90.413, 37.90.420, and 37.90.425.~~

~~(10)~~ (7) ~~In accordance with ARM 37.85.414, the~~ The case management team must ~~keep the plans of care on file and all records must be retained for a period of at least six years and three months from the date on which the service was rendered or until any dispute or litigation concerning the services is resolved, whichever is later~~ retain all of the member's records in accordance with ARM 37.85.414.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.413 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: COST OF ~~PLAN OF CARE~~ PERSON-CENTERED RECOVERY PLAN (1) In order to maintain the program cost within the appropriated ~~monies~~ federal and state funds, ~~of the financial limitations imposed under federal authorities, the cost of~~ plans ~~of care for recipients~~ the cost of a member's Person-Centered Recovery Plan (PCRP) may be limited by the department ~~collectively and individually~~.

(2) The total annual cost of services for each ~~recipient~~ member, except as ~~provided in (3)~~ approved by the department, may not exceed a maximum amount set by the department ~~based on the number of recipients and the amount of monies available to the program as authorized in appropriation by the legislature~~.

(3) ~~The total cost of services provided under a plan of care to a recipient may exceed the maximum amount set by the department if authorized by the department based on the department's determination that one or more of the following circumstances is applicable:~~ The department may limit the services members receive under the waiver program based upon the appropriation of funding by the legislature.

~~(a) the excess service need is short term and only a one time purchase is necessary;~~

~~(b) the excess service need is intensive services of 90 days or less which are necessary to:~~

~~(i) resolve a crisis situation which threatens the health and safety of the recipient;~~

~~(ii) stabilize the recipient following hospitalization or acute medical episode; or~~

~~(iii) prevent institutionalization during the absence of the normal caregiver;~~

~~(c) the excess service need is adult residential services; or~~

~~(d) the recipient has long term needs that result in the maximum amount being exceeded in minor amounts at various times.~~

(4) The cost of services ~~to be provided under a plan of care is~~ in the PCRP must be determined prior to implementation of the ~~proposed plan of care~~ PCRP and may be revised as necessary ~~after implementation~~ by the department or the department's designee.

~~(5) The cost determination for the services provided under a plan of care may be made at any time that there is a significant revision in the plan of care.~~

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.415 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: COMMUNITY TRANSITION SERVICES ~~REQUIREMENTS~~ (1) Community transition services ~~means~~ are nonrecurring set-up expenses for ~~persons~~ members who are transitioning from an institutional ~~or other provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses~~ setting into a community living setting or a private residence and are necessary to coordinate and purchase to establish a basic household.

(2) The department may approve community transition services on a case-by-case basis from other settings in circumstances that address a member's health or safety.

(3) The case management team must complete a needs assessment prior to implementation of the service.

(4) The needs assessment must demonstrate community transition services are required to:

(a) address a health or safety concern; and

(b) discharge from or avert institutionalization.

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

(a) remains the same.

(b) essential household ~~furnishings~~ items ~~required, including furniture, window coverings, food preparation items, and bed/bath linens~~;

(c) moving expenses incurred directly from the moving, transport, provision, or assembly of household furnishings for the residence;

(d) customary setup fees or deposits for utility or service access, including telephone landline or cell phone, electricity, heating, and water; ~~and~~

(e) ~~activities to assess need for, arrange for, or procure resources~~ services necessary for a member's health and safety; and

(f) fees associated with obtaining legal or identification documents necessary for housing applications.

(3) and (4) remain the same but are renumbered (6) and (7).

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

37.90.416 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PAIN AND SYMPTOM MANAGEMENT ~~REQUIREMENTS~~ (1) Pain and symptom management is defined as a service that ~~allows the provision of~~ provides traditional and nontraditional methods of pain reduction ~~and/~~or management.

(2) ~~Treatments are limited to~~ Allowable non-traditional or mind-body therapies include:

(a) through (d) remain the same.

(e) ~~mind-body therapies such as~~ hypnosis ~~and biofeedback~~;

(f) biofeedback; and

~~(f)~~ (g) pain mitigation counseling/coaching.~~;~~

~~(g) chiropractic therapy; and~~

~~(h) nursing services by a nurse specializing in pain and symptom management.~~

(3) Allowable traditional therapies include:

(a) chiropractic therapy; and

(b) nursing services by a nurse specializing in pain and symptom management.

(4) The service must be prescribed by a licensed health care professional.

(5) The service must be documented in the member's Person-Centered Recovery Plan and:

(a) address the member's chronic or acute symptoms, complaints, or complications indicating the need for services;

(b) include the number of authorized sessions; and

(c) document the expected outcomes of the provision of the service.

(6) Services must be provided by a person licensed or certified to provide the service.

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

37.90.417 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: HEALTH AND WELLNESS ~~REQUIREMENTS~~ (1) Health and wellness ~~is defined as~~ services are services that assist ~~consumers~~ a member in acquiring, retaining, and improving self-help, socialization, and adaptive skills to reside successfully in the community.

(2) The ~~service includes~~ services include ~~adaptive health, wellness, and therapeutic recreational services such as~~:

~~(a) hydrotherapy;~~

(a) classes on weight loss, smoking cessation, and healthy lifestyles;

~~(b) living well with a disability; and~~

(b) health club memberships and exercise classes;

~~(c) access to fitness and exercise facilities.~~

(c) art, music, and dance classes;

(d) costs associated for participating in adaptive sports and recreational activities;

(e) classes on managing disabilities; and

(f) hippotherapy.

(3) The service must be prescribed by a licensed health care professional.

(4) The service must be documented in the member's Person-Centered Recovery Plan and:

(a) address the member's symptoms, complaints, or complications indicating the need for services;

(b) include the number of authorized sessions; and

(c) document the expected outcomes of the provision of the service.

(5) Services may be provided in a setting appropriate to the provision of the service.

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

IMP: 53-6-402, MCA

37.90.420 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: NOTICE AND FAIR HEARING (1) The department provides written notice to ~~an applicant for and recipient of services~~ a member when a determination is made by the department concerning:

(a) ~~financial~~ Medicaid eligibility;

(b) ~~level of care~~ eligibility for the SDMI HCSB waiver program; and

(c) ~~feasibility, including cost-effectiveness of services to the recipient; and~~ changes to a member's Person-Centered Recovery Plan (PCRP).

~~(d) termination of recipient's eligibility for the program.~~

(2) The department provides a ~~recipient of services~~ member with notice ten working days before termination of services due to a determination of ineligibility.

(3) ~~A person aggrieved by any adverse final determinations as listed in (1)(a) through (d) or any adverse determinations regarding services in the plan of care may request a~~ Requirements for administrative review and fair hearings ~~as~~ are provided for in ~~ARM 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337~~ ARM Title 37, chapter 5, subchapter 3.

~~(4) Fair hearings will be conducted as provided for in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.~~

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.425 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CASE MANAGEMENT~~,~~ ~~REQUIREMENTS~~ (1) Case management means case management as defined at the Code of Federal Regulations (CFR) at 42 CFR 440.169(d)(e). ~~is the planning for, arranging for, implementation of, and monitoring of the delivery of services available through the program to a person.~~

~~(2) Case management services include:~~

~~(a) developing a plan of care for a person;~~

~~(b) monitoring and managing a plan of care for a person;~~

~~(c) establishing relationships and contracting with service providers and community resources;~~

~~(d) maximizing a person's efficient use of services and community resources such as family members, church members, and friends;~~

~~(e) facilitating interaction among people working with a person;~~

~~(f) prior authorizing the provision of all services; and~~

~~(g) managing expenditures.~~

(2) Case management services offered under the Severe and Disabling Mental Illness, Home and Community Based waiver program are provided through a selective contract for conflict free case management under the authority of a 1915(b)(4) waiver authorized under Section 1915(b) of the Social Security Act.

(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 ~~persons~~ 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 licensed social worker with two consecutive years' experience providing case management services to adults with severe and disabling mental illness.

~~(4) The case management team must:~~

~~(a) be a legal entity contractually retained by the department to provide Medicaid funded home and community case management services to persons who are elderly or who have physical disabilities;~~

~~(b) function as directed by the department;~~

~~(c) assure that services provided to recipients are of appropriate quality and cost effective;~~

~~(d) provide case management services to no more than the number of persons specified by the department;~~

~~(e) manage expenditures within the allocated monies; and~~

~~(f) meet the department's reporting requirements.~~

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

37.90.430 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: ADULT DAY HEALTH~~;~~ ~~REQUIREMENTS~~ (1) Adult day health ~~is the provision of services to meet the health, social, and habilitation needs of a recipient in settings outside the recipient's place of residence~~ is a supervised daytime program that offers health and social services for adults with severe and disabling mental illness to ensure optimal functioning of the member and enrichment activities through engaging social community but who do not require the intervention or services of a registered nurse or licensed rehabilitative therapist onsite.

(2) An entity providing adult day health services must be licensed as an adult day care center as provided at ARM 37.106.301, et seq.

(3) Adult day health services are furnished in an outpatient setting that does not include overnight residential services.

(4) Adult day health includes the following service components:

(a) meals as described in ARM 37.106.2616;

(b) health, nutritional, recreational, and social habilitation; and

(c) transportation between the member's place of residence and the adult day health center.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.431 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PERSONAL ASSISTANCE SERVICE~~, REQUIREMENTS~~ (1) Personal assistance service (PAS) is the provision of ~~an array of personal care and other services to a recipient for the~~

~~purpose of meeting personal needs in the home and the community~~ long term service and supports in a member's home and in the community tailored to each member's needs and living situation.

(2) ~~Personal assistance services include the provision of the following services~~ PAS may be provided by:

(a) ~~personal care services as specified at ARM 37.40.1101(1) through (5) and 37.40.1301, 37.40.1302, 37.40.1305, 37.40.1306, 37.40.1307, and 37.40.1308~~ a home health agency provider;

(b) ~~homemaking services as specified at ARM 37.90.436~~ a community first choice/personal assistance service (CFC/PAS) provider; or

(c) ~~supervision for health and safety reasons; and~~ a member self-directing the service, as described in [NEW RULE III].

~~(d) nonmedical transportation as specified at ARM 37.90.450.~~

(3) ~~Personal assistance services do not include any skilled services that require professional medical training except as allowed in ARM 37.40.1301, 37.40.1302, 37.40.1305, 37.40.1306, 37.40.1307, and 37.40.1308.~~ PAS may be provided only when the services available in CFC/PAS are insufficient to meet the following needs of the member:

(a) the member has a documented physical need that requires hours in addition to the 42 bi-weekly hours available under CFC/PAS; or

(b) the member requires services outside of their residence that cannot be provided by CFC/PAS.

(4) ~~The requirements for the delivery of personal care services specified at ARM 37.40.1101, 37.40.1102, 37.40.1105, 37.40.1106, 37.40.1301, 37.40.1302, 37.40.1305, 37.40.1306, 37.40.1307, 37.40.1308, and 37.40.1315 govern the provision of personal assistance services.~~ PAS may not be provided in a residential habilitation.

(5) PAS includes the following service components:

(a) activities of daily living;

(b) instrumental activities of daily living; and

(c) non-medical transportation.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.438 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: RESPITE CARE~~, REQUIREMENTS~~ (1) Respite care is ~~the provision of supportive care to a recipient so as to relieve those unpaid persons normally caring for the recipient from that responsibility~~ planned or emergency care provided to a member with need for support and supervision in order to provide temporary relief to the unpaid caregiver of the member.

(2) Respite care services may be provided ~~only on a short term basis, such as part of a day, weekends, or vacation periods.~~ in:

(a) a member's place of residence;

(b) an alternative private residence; or

(c) a residential habilitation setting or a nursing facility.

(3) Respite care ~~services may be provided only on a short term basis, such as part of a day, weekends, or vacation periods.~~ is provided for members who:

(a) in the absence of respite care, would require institutional level of care;

(b) are unable to care for themselves; and

(c) have an unpaid caregiver as the member's primary caregiver.

(4) A person providing respite care services must be:

(a) physically and mentally qualified to provide this service to the ~~recipient~~ member; ~~and~~

(b) aware of emergency assistance systems and CPR-certified; and

(c) able to follow the positive behavioral supports that are in place.

(5) A person who provides respite care services to a ~~recipient~~ member may be required by the case management team to have the following when the ~~recipient's~~ member's needs so warrant:

(a) knowledge of the physical and mental conditions of the ~~recipient~~ member;

(b) knowledge of common medications and related conditions of the ~~recipient~~ member; and

(c) ~~capability~~ ability to administer basic first aid.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.447 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PRIVATE DUTY NURSING~~, REQUIREMENTS~~ (1) ~~Nursing is the provision of individual and continuous nursing care.~~ Private duty nursing are medically necessary nursing services delivered to a member in their place of residence.

(2) Private duty nursing may be provided by:

(a) a licensed registered nurse (RN); or

(b) a licensed practical nurse (LPN) under the supervision of a RN, physician, dentist, osteopath, or podiatrist authorized by the state of Montana to prescribe medication.

(3) Private duty nurses may be employed by a home health care provider or self-employed.

(4) Private duty nursing may be provided when Home Health Agency services under state plan, defined in ARM 37.40.701, are not appropriate or available.

(5) Private duty nursing must be prescribed by an appropriately licensed medical professional.

(6) Private duty nurses must comply with the Montana Nurse Practice Act.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.448 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PERSONAL EMERGENCY RESPONSE SYSTEMS~~, REQUIREMENTS~~ (1) A personal emergency response system (PERS) is an electronic device ~~or mechanical system~~ used to ~~summon~~

secure assistance in an emergency situation to allow a member to gain greater independence.

(2) A ~~personal emergency response system~~ PERS must be connected to ~~a local~~ an emergency response unit with the capacity to activate emergency ~~medical~~ personnel.

(3) remains the same.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 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~~, REQUIREMENTS~~ (1) Specialized medical equipment and supplies is the provision of items of medical equipment and supplies to a ~~recipient~~ member for the purpose of maintaining and improving the ~~recipient's~~ member's ability to reside at home and to function in the community.

~~(2) The provision of medical equipment and supplies services may include:~~

~~(a) the provision of consultation regarding the appropriateness of the equipment or supplies; and~~

~~(b) the provision of supplies and care necessary to maintain a service animal.~~

~~(3)~~ (2) Specialized medical equipment and supplies must:

(a) be functionally necessary and relate specifically to the ~~recipient's~~ member's disability;

(b) substantively meet the ~~recipient's~~ member's needs for accessibility, independence, health, or safety;

(c) be likely to improve the ~~recipient's~~ member's functional ability or the ability of a caregiver or service provider to maintain the ~~recipient~~ member in the ~~recipient's~~ member's home; and

(d) be the most cost-effective item that can meet the needs of the ~~recipient~~ member.

~~(4) Any particular item of medical equipment or supplies, except for an item or supply necessary to maintain a service animal, is limited to a one time purchase unless otherwise authorized by the department in writing.~~

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

~~(6)~~ (4) A service animal is an animal trained to undertake particular tasks on behalf of a ~~recipient~~ member that the ~~recipient~~ member cannot perform and that are necessary to meet the ~~recipient's~~ member's needs for accessibility, independence, health, or safety.

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

~~(8)~~ (6) Supplies necessary for the performance of a service animal ~~may include, but are not limited to, leashes, harness, backpack, and mobility cart when the supplies are specifically related to the performance of the service animal~~ to meet the specific needs of the ~~recipient~~ member are allowable expenses. Supplies do not include food to maintain the service animals.

~~(9)~~ (7) Care necessary to the health and maintenance of a service animal ~~may~~ include~~, but is not limited to,~~ veterinarian care, transportation for veterinarian

care, license, registration, and where the ~~recipient~~ member or ~~recipient's~~ member's primary care giver is unable to perform it, grooming.

(10) and (11) remain the same but are renumbered (8) and (9).

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.450 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: NONMEDICAL TRANSPORTATION~~, REQUIREMENTS~~ (1) Nonmedical transportation is the provision to a ~~recipient~~ member of transportation through common carrier or private vehicle for access to social or other nonmedical activities.

(2) remains the same.

(3) Nonmedical transportation may be provided by accessible transportation providers, cabs, personal care provider agencies, and Life Coaches. Nonmedical transportation providers must ~~provide~~ show proof of:

(a) a valid Montana driver's license; and

(b) adequate automobile insurance~~; and~~.

~~(c) assurance of vehicle compliance with all applicable federal, state, and local laws and regulations.~~

(4) Nonmedical transportation services must be:

(a) provided by the most cost-effective mode~~.~~; and

(b) provided only after all volunteer, state plan, or other publicly funded transportation programs have been exhausted or determined inappropriate.

(5) Nonmedical transportation services are available only for the transport of ~~recipients~~ members to and from activities ~~that are included in the individual plan of care~~ identified in the member's Person-Centered Recovery Plan.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401,~~ 53-6-402, MCA

5. The department proposes to repeal the following rules:

37.90.428 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ADULT RESIDENTIAL CARE REQUIREMENTS

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

37.90.429 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: SUPPORTED LIVING, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.432 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: HABILITATION, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.436 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: SPECIALLY TRAINED ATTENDANT CARE, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.437 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: HOMEMAKING REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.440 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: OUTPATIENT OCCUPATIONAL THERAPY, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.441 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: PSYCHO-SOCIAL CONSULTATION, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.442 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: SUBSTANCE-RELATED DISORDERS SERVICES, REQUIREMENTS

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

37.90.445 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: DIETETIC SERVICES, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.446 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: NUTRITION, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

37.90.460 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ILLNESS MANAGEMENT AND RECOVERY SERVICES, REQUIREMENTS

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

37.90.461 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: WELLNESS RECOVERY ACTION PLAN (WRAP) SERVICES, REQUIREMENTS

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.90.401, 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.410, 37.90.412, 37.90.413, 37.90.415, 37.90.416, 37.90.417, 37.90.420, 37.90.425, 37.90.430, 37.90.431, 37.90.438, 37.90.447, 37.90.448, 37.90.449, and 37.90.450. The department proposes to adopt New Rules I through XV and repeal ARM 37.90.428, 37.90.429, 37.90.432, 37.90.436, 37.90.437, 37.90.440, 37.90.441, 37.90.442, 37.90.445, 37.90.446, 37.90.460 and 37.90.461.

The following summary explains the programmatic changes and the reasonable necessity for the proposed rulemaking.

Home and Community Based Services for Adults with Severe and Disabling Mental Illness

The department has submitted a request to the Centers for Medicare and Medicaid Services (CMS) to renew the Montana Medicaid Severe and Disabling Mental Illness (SDMI) 1915(c) Home and Community Based Services (HCBS) Waiver and concurrent 1915(b)(4) SDMI Waiver, for an effective date of July 1, 2020. The waiver renewal will be for five years, to June 30, 2025. As part of the waiver renewal request to CMS, the department is proposing changes to the waiver program, and the following rule amendments implement the changes:

a. The SDMI definition has been updated to reflect current terminology. This does not reflect a change in eligibility for the waiver.

b. DPHHS is proposing to increase the unduplicated members served by the waiver from 357 per year to 600 members in year one, 650 members in year two, and 750 members in years three through five.
c. The SDMI determination form has been replaced with the Severe and Disabling Mental Illness, Home and Community Services Waiver, Evaluation and Level of Impairment form.
d. A member's placement on the waitlist will be determined by their combined scores from the level of care assessment and level of impairment evaluation. There will no longer be an additional assessment to determine a member's placement on the waitlist.
e. There is a proposed reserve capacity in the waiver for individuals discharging from the Montana State Hospital, the Montana Mental Health Nursing Care Center, and individuals accessing Money Follows the Person.
f. Services have been removed, added, and amended to better serve the behavioral needs and symptomology of members with severe and disabling mental illness and to alleviate duplicative services. Pre-vocational services are removed due to both underutilization and an inherent duplication with support employment. Residential habilitation has been expanded to add two new levels of group home services: mental health group home and intensive mental health group home. Specially trained attendant has been replaced with behavioral intervention assistant to better serve the behavioral needs of this population.
g. Additional oversight has been added for incident management. The definition for serious occurrences has been updated and classified under critical and non-critical. This also includes generating monthly reports to monitor serious occurrences and a monthly utilization report for emergency room visits.
h. Changes were made to provide further details regarding the overall waiver administration, oversight, and operations.

The reasonable necessity for proposing the above rule changes is to enact the changes made in the Medicaid Severe and Disabling Mental Illness (SDMI) 1915(c) Home and Community Based Services (HCBS) Waiver renewal. The proposed changes increase access for adults with a SDMI to receive long term services and supports individualized to their needs in the community and who might otherwise require services in an institution. In addition, it furthers the department's ability to meet the needs of adults with a SDMI through the provision of more services of specialty providers statewide.

The department is proposing to repeal rules for services that are no longer authorized or that have been restructured in the SDMI HCBS waiver, specifically ARM 37.90.428, 37.90.429, 37.90.432, 37.90.436, 37.90.437, 37.90.440, 37.90.441, 37.90.442, 37.90.445, 37.90.446, 37.90.460, and 37.90.461. This is necessary to align administrative rules with the services that will be authorized in the waiver effective July 1, 2020.

Fiscal Impact

The department is proposing to increase the unduplicated members served by the waiver from 351 per year to 600 in year one and 650 in year two. This has a fiscal impact of $84,500 in state fiscal year (SFY) 2021 and $101,800 in SFY2022.

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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 12, 2020.

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 or may be made by completing a request form at any rules hearing held by the department.

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 adoption, amendment, and repeal of the above-referenced rules will 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/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Temporary Emergency Rule I pertaining to semiannual assessments of banks and supervisory fees of credit unions related to the COVID-19 pandemic	))))))	NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Administration is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 13, 2020, Governor Bullock extended the emergency in the State of Montana regarding the COVID-19 pandemic in Executive Order 3-2020.

D. In addition, Governor Bullock has issued various emergency directives ordering Montanans to stay at home and schools and nonessential businesses to close, limiting evictions and foreclosures, and implementing other measures to limit the spread of COVID-19 and reduce its economic impact.

E. On April 22, 2020, Governor Bullock issued a directive regarding Executive Orders 2-2020 and 3-2020 and providing guidance and conditions for reopening Montana businesses.

F. The director of the Department of Administration finds that under the emergency circumstances of the COVID-19 pandemic and the continuing threat to the public health, safety, and welfare, adoption of a rule as described herein upon fewer than 30 days' notice is appropriate and necessary. The department knows state-chartered banks and credit unions have been asked to work with borrowers, recognizing that the economic consequences of the COVID-19 pandemic have been both wide and deep. Because of the vital services banks and credit unions provide to their customers and Montana businesses and because banks and credit unions have themselves made sacrifices during difficult economic times, the department concluded it should waive the June assessment or fee for banks and credit unions. The department can adequately fulfill its mission without funding from the first semiannual assessments for banks and credit unions, so it has chosen to forgo them under the present emergency circumstances. This will allow institutions on the front lines of the economic crisis caused by the COVID-19 pandemic to retain the fees

and use the funds as the management and the board of the institution deem appropriate under the circumstances to best assist their customers.

The department usually invoices banks and credit unions for assessments and fees annually in June. There is not sufficient time before the invoice date to complete the normal rulemaking process. The department is therefore adopting this temporary emergency rule to waive the June assessment for all state-chartered banks and credit unions.

G. There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, for banks and credit unions to protect the public health, safety, and welfare due to the emergency conditions of the COVID-19 pandemic, because there is not sufficient time to complete the normal rulemaking process before June, and to ensure banks and credit unions have all available resources to work with their borrowers.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The temporary emergency rule is effective April 24, 2020, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides:

NEW RULE I WAIVER OF FIRST SEMIANNUAL ASSESSMENT FOR BANKS AND SUPERVISORY FEE FOR CREDIT UNIONS DUE TO THE DECLARED EMERGENCY DERIVED FROM THE COVID-19 PANDEMIC (1) The semiannual bank assessment that would normally be billed in June 2020 and collected in July 2020 pursuant to ARM 2.59.104 is waived.

(2) The semiannual credit union assessment that would normally be billed in June 2020 and collected in July 2020 pursuant to ARM 2.59.401 is waived.

AUTH: 32-1-213, 32-1-218, 32-3-201, MCA
IMP: 32-1-213, 32-1-218, 32-3-201, MCA

REASON: In addition to the rationale stated in paragraph 1, the intent of this temporary emergency rule is to reduce the assessments that the department will receive from banks for the first half of 2020 from approximately $1,726,000 to zero and to reduce the fees the department will receive from credit unions for the first half of 2020 from approximately $144,000 to zero. Because this rule is temporary, the rule will expire on August 22, 2020. The rule will affect only fees for the first half of 2020. The rule will not affect fees for the second half of 2020 or any fee thereafter.

The department cannot know what economic conditions may exist in January 2021 when the second semiannual assessments are due. Therefore, the department will defer the issue of future fee waivers until the economic impacts of the COVID-19 pandemic are clearer.

5. The rationale for the temporary emergency rule is set forth in paragraph 1 and in the statement of reasonable necessity following the rule.

6. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State April 24, 2020.

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

In the matter of the amendment of ARM 12.3.403 pertaining to replacement licenses	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 28, 2020, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-527 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 352 of the 2020 Montana Administrative Register, Issue Number 4.

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

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: The department received comments in favor of the rule proposal.

RESPONSE #1: The department appreciates the participation and support in the rulemaking process.

COMMENT #2: The department received several comments opposed to the switch from the thermal paper to regular paper.

RESPONSE #2: These comments are outside the scope of this rulemaking process. The department adopted the proposed rule amendments to make it more convenient for customers by removing the limit of reprints allowed and the requirement for customers to sign an affidavit to receive a replacement license or permit. The decision to switch from the thermal paper to regular paper was made separately from and prior to this rulemaking process. The decision to switch was made for several reasons. Most customers will enjoy the convenience of purchasing their licenses and permits online and the ability to print them at home for immediate availability. The cost of the thermal paper continues to increase, and the equipment used to print on the thermal paper is aging and unable to be replaced. Therefore, the department chose to change to printing licenses and permits on regular paper.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State May 5, 2020.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.168.411 general practice requirements, 24.168.2101 continuing education requirements – audit, 24.168.2104 approved continuing education, 24.168.2301 unprofessional conduct, and the repeal of 24.168.203 board meetings	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 14, 2020, the Board of Optometry (board) published MAR Notice No. 24-168-44 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 256 of the 2020 Montana Administrative Register, Issue No. 3.

2. On March 9, 2020, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the March 13, 2020 deadline.

3. The board has amended ARM 24.168.411, 24.168.2101, 24.168.2104, and 24.168.2301 exactly as proposed.

4. The board has repealed ARM 24.168.203 exactly as proposed.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.D., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 5, 2020.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of Temporary Emergency Rule I pertaining to the suspension of telepharmacy monthly inspections in response to the COVID-19 pandemic	)))))	NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Montana Board of Pharmacy is adopting Temporary Emergency Rule I for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards to the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards to the COVID-19 pandemic in Executive Order 3-2020.

D. On March 26, 2020, Governor Steve Bullock issued a stay at home directive to slow the spread of COVID-19.

E. The Montana Board of Pharmacy finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare requiring adoption of a rule upon fewer than 30 days' notice. As all Americans are being advised to practice social distancing, the circumstances of the COVID-19 pandemic may prevent Montana pharmacists and pharmacy personnel from performing monthly on-site inspections of telepharmacy locations.

F. There is a reasonable necessity to immediately adopt a temporary emergency rule pursuant to 2-4-303, MCA, for telepharmacies to protect the public health, safety, and welfare because of the emergency conditions of the COVID-19 pandemic to avoid the possibility of spreading the virus, and to comply with social distancing requirements.

2. The temporary emergency rule is effective April 30, 2020, when this rule notice is filed with the Secretary of State.

3. The text of the temporary emergency rule provides as follows:

NEW RULE I TEMPORARY EMERGENCY SUSPENSION OF TELEPHARMACY MONTHLY INSPECTIONS (1) The terms of this temporary emergency rule will expire August 5, 2020, unless additional rulemaking is needed to continue the response to the COVID-19 pandemic.

(2) The requirement for monthly inspections of telepharmacies provided in ARM 24.174.1302 is temporarily suspended. All other telepharmacy requirements remain in place.

AUTH: 2-4-303, 37-7-201, MCA
IMP: 37-7-201, 37-7-321, MCA

REASON: In addition to the rationale stated in paragraph 1, and the information provided by federal and state directives and executive orders, the Montana Board of Pharmacy deems it necessary to adopt this emergency rule to temporarily suspend the requirement of in-person inspections of remote telepharmacy sites. The board determined it is reasonably necessary to suspend the monthly inspections to limit travel required for pharmacy personnel and to comply with social distancing requirements of the COVID-19 crisis.

4. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpha@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF PHARMACY
TONY KING, PharmD
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 2020.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.177.401 fees, 24.177.504 temporary permit, and 24.177.2105 continuing education	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 14, 2020, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-35 regarding the public hearing on the proposed amendment of the above-stated rules, at page 267 of the 2020 Montana Administrative Register, Issue No. 3.

2. On March 6, 2020, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the March 13, 2020 deadline.

3. The board has amended ARM 24.177.401, 24.177.504, and 24.177.2105 exactly as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS
KELSEY WADSWORTH, PT, DPT, OCS
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 5, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.4.502 importation of restricted or prohibited alternative livestock and 32.4.1309 import requirements for cervids	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 27. 2019, the Department of Livestock published MAR Notice No. 32-19-304 regarding the proposed amendment of the above-stated rules at page 2307 of the 2019 Montana Administrative Register, Issue Number 24.

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:

32.4.502 IMPORTATION OF RESTRICTED OR PROHIBITED ALTERNATIVE LIVESTOCK (1) through (1)(b) remain as proposed.

(c) ~~Importation of wild or captive elk, mule deer, and whitetail deer into Montana, except direct to slaughter, is restricted except pursuant to a diagnostic technique and test protocol for the antemortem detection of chronic wasting disease that is approved by the state veterinarian. No animal may be imported from a geographic area or alternative livestock area where chronic wasting disease is endemic or has been diagnosed ever.~~ Species susceptible to chronic wasting disease may not be imported from a geographic area or alternative livestock premises where chronic wasting disease is endemic or has been diagnosed within 50 miles within the previous five years. The county of origin must have a wildlife surveillance program that has been reviewed and approved by the state veterinarian.

(2) through (4) remain as proposed

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA
IMP: 81-2-102, 81-2-103, 87-4-422, MCA

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) and (2) remain as proposed.

(3) The state veterinarian may deny importation from states that do not meet the following requirements:

(a) The state of origin must have the legal means of control or disposition of CWD affected, exposed or trace herds;

(b) the state of origin must have the power and authority to quarantine CWD affected, exposed or trace herds; and

(c) if CWD has been confirmed in any herds within the state of origin, the state veterinarian of that state must have completed an epidemiological investigation

and identified all CWD affected, exposed or trace herds.~~; and~~

~~(d) no confirmed cases of CWD in wildlife as established by a wildlife surveillance program that the state veterinarian determines is equivalent to or more robust than Montana's program.~~

(4) remains as proposed.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA
IMP: 81-2-102, 81-2-103, 87-4-422, 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: The Montana Department of Fish, Wildlife and Parks (FWP) appreciates the opportunity to provide comment of the Montana Department of Livestock's proposed amendment of ARM 32.4.502 (importation of restricted or prohibited alternative livestock) and ARM 32.4.1309 (import requirements for cervids).

Importation of CWD positive animals would pose a threat not only to Montana's cervid industry, but to free-ranging wildlife as well. These amendments will reduce the risk of importation of CWD positive animals that might go undetected even while participating in a herd certification program, since currently available antemortem tests cannot detect the earliest stages of infection. In addition, the amendment to ARM 32.4.1309 addresses uncertainty regarding the geographic distribution of CWD in wildlife in many states and provinces which makes it difficult to definitively determine risk associated with proximity of some captive cervids to infected wildlife.

FWP supports the amendments as proposed.

Response #1: Thank you for the comment. The Montana Department of Livestock (department) agrees that changes to current administrative rules are necessary to mitigate the risk of importing a CWD positive animal to an alternative livestock premises.

Comment #2: Concerns were raised because of 18 certified U.S. herds being diagnosed with CWD in 2018.

First, of the 18 herds that tested positive, only one pertained to elk, the others were mostly whitetail operations. I believe this is because that until implementing the federal CWD Program, most states with Whitetail operations did a limited percentage of testing, if requiring any at all. Elk operations, especially in the Western States and Canada, implemented testing many years prior to the federal program.

The elk operation in question is located in Oklahoma and has been a certified, closed herd status for many years. How did CWD surface in this herd? Certainly,

we do know it was not from importation but more than likely came from outside the operation's fence. Currently the largest CWD threat to our private operations, especially in Montana, is not importation but from Montana's untested wildlife.

Much time is spent by producers, along with the Montana Department of Livestock, prior to all importations. CWD from importation is very low risk with the small number of animals imported under the current regulations that are already in place. Rather than putting further restrictions on existing operations' ability to conduct business, I would ask the department to look at other alternatives such as:
• Whereas the 2018 statistics show the current CWD issue is overwhelmingly in whitetail, ban the importation of whitetail deer only.
• Limit importation of elk to certified herds from an area that has not had a positive CWD within the county of residence of said herd within the last five years.

Response #2: Thank you for your comment. The number of certified herds diagnosed with CWD nationally is of significant concern to the department. In FY18, there were 15 detections with seven of the affected herds holding certified herd status. In FY19, there were 19 detections with nine of the affected herds holding certified herd status. Between FY18 and FY19, eight of the 34 total herds were elk herds.

The department does not feel that species specific limitations will address our concern pertaining to the efficacy of the CWD Herd Certification Programs (HCP). However, the department does agree that the risk of CWD from wildlife or the movement of risk materials is of concern to alternative livestock operations in Montana. Because of that risk, the department is amending the language from the proposed rule to limit the importation of susceptible species from areas where CWD is endemic or has been diagnosed within 50 miles within the previous five years and requiring that the county of origin has a wildlife surveillance program that has been reviewed and approved by the state veterinarian.

This change will still allow for importation of live animals into Montana. This change will also address the department's concern that the CWD HCP does not provide sufficient surveillance to detect recent introductions from wildlife into herds that may export animals to Montana.

Comment #3: As a Montana producer I see no need for any rule change with the very low number of importations into our state. After working with the state on rules for many years it appears that Montana continues to work toward elimination by regulation of the industry. After being involved in cattle and hog production for 40 years I have never seen the constant rule changes in any other livestock industry. Please leave the rules alone and work with the producers using the rules that we have had for years with no issues instead of again limiting our genetic abilities for the future.

Response #3: The department recognizes that this rule limits access to new genetics and that there is a low number of alternative livestock imports into Montana.

The department is concerned about the ability of the CWD HCP to detect new introductions of CWD into an alternative livestock herd prior to animal exports from such a herd. The impact of importing a CWD positive animal or an animal that originated from a CWD affected premises would be severe for Montana alternative livestock producers. To address these concerns, the department is amending the language from the proposed rule to limit the importation of susceptible species from areas where CWD is endemic or has been diagnosed within 50 miles within the previous five years and requiring that the county of origin has a wildlife surveillance program that has been reviewed and approved by the state veterinarian. This change will still allow for importation of live animals into Montana. This change will also address the department's concern that the CWD HCP does not provide sufficient surveillance to detect recent introductions from wildlife into herds that may export animals to Montana.

Comment #4: These rules will only force more game farms out of business. We are reducing our deer and elk to a hobby as that is what this industry really has become. As other states take up this stance, a family farm like us who only sell out of state will have nowhere to go with the animals. A meat market will not pay the bills incurred with the testing requirement, vet requirements, herd inventory requirement, and the animal tax.

Response #4: Thank you for your comment. The department recognizes that animal health regulations can have financial implications on livestock operations. The department is concerned about the efficacy of the CWD HCP program to prevent the movement of CWD infected animals across state lines and believes that the consequences of an unchecked spread of CWD will have a much greater impact on alternative livestock operations. These consequences include possible herd depopulation or extended year quarantine. However, in recognition of the risk of CWD associated with the presence of the disease in wildlife in Montana, the department has revised the language from the proposal. Please refer to the department's Response #2.

Comment #5: I ranch in the Cascade area and produce Angus feeder calves and also operate an alternative livestock operation. Regarding administrative rule changes, they need to be as a result of Legislative directive and clear and concise. The new language in ARM 32.4.1309(3)(d) does neither.

This language is as gray as it gets and is wide open for interpretation. It could be interpreted that if the governing agency determines that if the export state is not looking hard enough that the importation could be denied. If export state surveillance isn't equivalent? Does that mean one portion in his or her opinion does not meet their expectations that import is denied?

Make no mistake health concerns are paramount in any animal production and must be taken very seriously. The elk industry has supported high standards for health review and we currently have checks and balances in the current standards that are working. What we do not need is more unpredictability and vagueness in the rules.

CWD has raised its ugly head in the state's wildlife, and I find it hard to believe that increasing the difficulty of producers to import superior genetics is going to help that situation. Our state as well as other states monitor our private herds at a much higher degree than those managing the wildlife.

At the very least strike the new language in ARM 32.4.1309(3)(d) from proposed rule changes.

Response #5: Thank you for your comment. The department understands your concern regarding the interpretation of the language in rules. In order to address the department's concerns about the efficacy of the CWD HCP while addressing comments received during this rulemaking process, the department has removed the language amendment to ARM 32.4.1309(3)(d). The department has also modified the language proposed for ARM 32.4.502 to clarify when alternative livestock import permits will be restricted due to concern over the presence of CWD in wildlife in proximity to the shipment origin.

Comment #6: The North American Elk Breeders Association (NAEBA) stands in opposition to the proposed amendments on the basis that the change will financially damage existing Montana elk ranches by halting their ability to engage in commerce and to grow their businesses, including the importation of new genetics and potential export opportunities due to reciprocity laws.

Response #6: Thank you for your comment. Please refer to Response #3 that addresses concerns regarding impacts to business due to restrictions on alternative livestock imports.

Comment #7: NAEBA does not believe a state closing its border is the answer to protecting the state from Chronic Wasting Disease. This course of action implies that interstate movement of farmed cervids is the biggest risk to the state for transmission of the disease. However, Montana is already discovering CWD in free-ranging deer herds on a regular basis.

Response #7: Thank you for your comment. Please refer to Response #2 that addresses the risk of CWD from wildlife in Montana and the department's revision to proposed language to address our concern regarding the efficacy of the CWD HCP while acknowledging the presence of CWD in wildlife in Montana.

Comment #8: There is greater concern about Montana's existing free-ranging wild deer than importation of farmed elk.

Response #8: Thank you for your comment. Please refer to Response #2 that addresses the risk of CWD from wildlife.

Comment #9: The proposed rule contains ambiguous language, including "geographic area" and "endemic". These terms are not defined and can therefore be widely interpreted.

Response #9: Thank you for your comment. The department appreciates the input regarding the interpretation of the language in rules. The term endemic has a consistent definition that assumes the disease is regularly found within a population. To address the concern regarding the term geographic area, the department has revised the language to reference the county from which an import originates and findings of CWD within 50 miles of the shipment origin.

Comment #10: The USDA Animal Plant and Health Inspection Service (APHIS) standards label movement of animals from certified herds as low-risk interstate movements. The program is working to find and control the disease.

Response #10: Thank you for your comment. The department disagrees that the program is working to find and control disease. The number of positive detections in herds that have reached Certified status in the CWD HCP suggests that the program is not effective in finding affected herds prior to the occurrence of interstate movements from these herds. Interstate movement of animals from affected herds has significant and long-term consequences for the receiving herds, including potential depopulation or long-term quarantine.

Comment #11: In the past decade, despite the absence of any blanket prohibition against importing elk, mule deer and whitetail deer into Montana, no CWD has been detected at any captive cervid farm within the state. These ten years of actual experience are strong empirical evidence that the importation of elk, mule deer, and whitetail deer to captive cervid facilities in Montana under current restrictions poses very little, if any, risk of spreading CWD within the state.

Response #11: Thank you for your comment. In the past decade, 38 total alternative livestock animals have been imported into Montana. All these imports have gone to a single alternative livestock premises within the state. As the majority of alternative livestock premises in Montana have not received imports in the past decade, this data is of limited value in assessing the risk level of importations. Nationally, the most recent elk herd detected in Oklahoma had several exports prior to detection. Upon tracing these movements, trace out animals were found and confirmed to be positive for CWD.

Comment #12: The USDA CWD Herd Certification Program effectively controls the transmission of CWD through interstate commerce.

Response #12: Thank you for your comment. Please see Responses #3 and #11 that address the number of certified herds found to be positive for CWD and the transmission of CWD through interstate commerce.

Comment #13: While no controlling judicial precedent directly addresses whether the department's blanket ban on the importation of elk, mule deer, and whitetail deer into Montana violates the Commerce Clause, if a statute or regulation discriminates against interstate commerce either on its face or in its practical effect, it is subject to

the strictest scrutiny, and the burden shifts to the governmental body to prove both the legitimacy of the purported local interest and the lack of alternative means to further the local interest with less impact on interstate commerce.

Response #13: Thank you for your comment. Regarding legitimate local purpose, this comment was raised pertaining to previous rulemaking and has since been addressed in the reasonable necessity statement associated with this rulemaking. By allowing for an ante-mortem test that would permit alternative livestock entry into Montana, and in the absence of risk from wildlife populations within Montana, the department proposed the least restrictive approach to ensure no introduction of CWD into Montana. As knowledge of the CWD distribution within wildlife in Montana increases, the department recognizes the risk of introduction of CWD from wildlife within Montana. Please refer to Response #2 that addresses this risk and the subsequent adjustments to the proposed rule language.

Comment #14: The proposed language represents an impermissible blanket ban on the importation of elk, mule deer, and whitetail deer into the State of Montana which substantially discriminates, either facially or in practical effect, against interstate commerce without any legitimate local purpose.

Response #14: Thank you for your comment. The department disagrees that the language creates an absolute barrier against the importation of alternative livestock. The language included a provision for the development and approval of an ante-mortem test that would allow importation of cervids into Montana to resume.

Regarding legitimate local purpose, this comment was raised pertaining to previous rulemaking and has since been addressed in the reasonable necessity statement associated with this rulemaking.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State May 5, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.404 Department of Livestock brands enforcement division fees	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 27, 2020, the Department of Livestock published MAR Notice No. 32-20-307 regarding the proposed amendment of the above-stated rule at page 527 of the 2020 Montana Administrative Register, Issue Number 6.

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

3. No comments or testimony were received.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State May 5, 2020.

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

In the matter of the amendment of ARM 37.115.106 pertaining to pools, spas, and other water features	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 27, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-902 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 530 of the 2020 Montana Administrative Register, Issue Number 6.

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

3. No comments or testimony were received.

4. This rule amendment is effective May 16, 2020.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

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

In the matter of the adoption of New Rule I and amendment of ARM 37.107.105, 37.107.117, 37.107.118, 37.107.120, 37.107.128, and 37.107.206 pertaining to Montana medical marijuana program	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 31, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-907 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 170 of the 2020 Montana Administrative Register, Issue Number 2.

2. The department has amended the following rules as proposed: ARM 37.107.105, 37.107.120, and 37.107.206.

3. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I [37.107.134] ADVERTISING (1) remains as proposed.
(2) A licensee may use the phrase "DPHHS Montana Medical Marijuana Program Licensed Provider" in its signage, on a website homepage, or on its promotional materials.

AUTH: 50-46-341, 50-46-344, MCA
IMP: 50-46-341, MCA

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

37.107.117 FEES (1) through (3) remain as proposed.
(4) A testing laboratory applicant must submit to the department with the initial application and renewal application an application fee of $2,000.
(4) and (5) remain as proposed but are renumbered (5) and (6).

AUTH: 50-46-344, MCA
IMP: 50-46-344, MCA

37.107.118 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) through (18) remain as proposed.

(19) A licensee may not cultivate hemp or engage in hemp manufacturing at a registered premises.

(a) A licensee's marijuana or marijuana product that contains low levels of THC remains marijuana that must be tracked in the state's seed-to-sale program.

(20) remains as proposed.

(21) A licensee may only sell hemp cannabidiol (CBD) products sourced from hemp produced and sold ~~through the Montana Department of Agriculture Hemp Program~~ by a producer who is licensed by a state or tribe with a USDA-approved hemp production plan.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

37.107.128 LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS (1) and (2) remain as proposed.

(3) Usable marijuana may be in the form of flower, marijuana-infused products, or concentrates. The following conversion shall be used to determine the allowable amounts of non-flower marijuana:

(a) 1 ounce of marijuana flower is equal to:

(i) 800 mg of THC in marijuana-infused products including edibles, or

(ii) 8 grams or 8 mL of THC in marijuana concentrate.

(b) remains as proposed.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

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: Many commenters asserted that the advertising ban unconstitutionally restricts the right to free speech guaranteed by the First Amendment, free speech is under attack, and "reasonable person" is not enforceable. Commenters also stated that because the MMP is a state-sanctioned legal program, businesses and individuals that are a part of the program are entitled to the same rights as any other legally established industry.

RESPONSE #1: The department disagrees with the conclusion that it is unconstitutional to restrict medical marijuana advertising. Prohibitions on advertising do not violate the constitutional right to free speech. The department must promulgate rules to implement statutes. "Statutory language must be construed according to its plain meaning and if the language is clear and unambiguous, no further interpretation is required." The Montana Supreme Court previously analyzed the advertising ban of 50-46-341, MCA, and concluded that it only prohibited commercial speech. Commercial speech is "accorded less constitutional protection than noncommercial speech." Mont. Cannabis Indus. Ass'n v. State, 2016 MT 44,

paragraph 64. The court reiterated that "marijuana use or possession unequivocally is an unlawful activity, so the ban on advertising does not involve lawful activity." Therefore, the court held that a statutory advertising ban does not rise to the level of a First Amendment violation.

COMMENT #2: Multiple comments were submitted stating that the advertising rule prevents awareness of medical marijuana businesses. Several comments stated that this is unfair because other businesses and pharmacies are allowed to advertise.

RESPONSE #2: Section 50-46-341(1), MCA expressly forbids the advertisement of marijuana or marijuana-related products. This rule is consistent with that prohibition and only further clarifies what constitutes the advertisement of marijuana or marijuana-related products.

This rule does not prohibit the advertisement of a business. Providers are able to advertise their business in any medium they choose. Many providers have already successfully advertised their businesses in newspapers, billboards, radio, and internet advertising campaigns without advertising marijuana.

The Montana Medical Marijuana Program (MMP) has a very limited purpose and scope: to provide medicine to people with debilitating conditions. The Montana Supreme Court used the Black's Law Dictionary definition of "advertising" in its Mont. Cannabis Indus. Ass'n v. State analysis. "Advertising is '[t]he action of drawing the public's attention to something to promote its sale." paragraph 63.

COMMENT #3: Commenters stated that the advertising ban is bad for patients. Several comments asserted that advertising is necessary, especially in light of untethering. Multiple commenters stated that cardholders need access to information in order to make educated decisions about which provider(s) to use.

RESPONSE #3: The MMP has a central office with staff readily available to all interested people. The MMP's website includes a list of licensed providers along with their general location and telephone number. Once a cardholder has a provider's name and phone number, they have the ability to reach out to multiple providers.

Providers may post non-prohibited content on a publicly accessible website and can utilize password protection to keep marijuana-specific information shielded from the general public. Interested cardholders can obtain passwords from the providers they contact to look at a provider's website. Or, the provider can provide a cardholder with the provider's dispensary address so a cardholder can visit it and discuss options with the provider in person.

COMMENT #4: One commenter asked why the state can use billboards with giant marijuana leaves, but providers cannot get information about medical marijuana or the MMP to the general public.

RESPONSE #4: The Montana Department of Transportation and the National Highway Traffic Safety Administration oversee those signs and are not subject to the Montana Medical Marijuana Act (Title 50, chapter 46, part 3, MCA). Again, this is a statutory prohibition and not set forth by rule.

COMMENT #5: A commenter stated that it would be better for an exception to the advertising prohibition that allows medical marijuana providers to identify that they are licensed by the MMP.

RESPONSE #5: The department agrees with this comment. Based upon feedback regarding the proposed rule's absolute prohibition on the use of the term "marijuana," the department amends the proposed rule. A licensee may use the phrase "DPHHS Montana Medical Marijuana Program Licensed Provider" in its signage, on a website homepage, or on its promotional materials.

COMMENT #6: Multiple commenters stated that the advertising rule is unfair because pharmaceutical and alcohol companies are allowed to advertise.

RESPONSE #6: Marijuana remains federally illegal. Pharmaceuticals and alcohol are not absolutely illegal under federal law. Those substances are heavily regulated by the federal government.

COMMENT #7: One commenter stated that the standard of a "reasonable person" is too vague and that it will be difficult to enforce these laws given the expansive amount of discretion from inspectors to determine what a "reasonable person" would assume is advertising.

RESPONSE #7: The department disagrees with this comment. The concept of a "reasonable person" is a widely used legal concept in both criminal and civil matters. The reasonable person is a hypothetical person standard who is of average awareness and understanding, though sufficiently thoughtful and reasonable. The primary function of the reasonable person is to attempt to assess the actual conduct of a party who is accused of negligence, or a breach of duty or foresight, by comparing what the person did in fact to what a different person, who would not be negligent or knowingly in breach of a duty, would have done. Read more at: Bouvier Law Dictionary - Reasonable Person (Reasonable Man or Reasonable Woman).

The MMP necessarily has discretion in its regulation of providers. Under Harlow v. Fitzgerald (1982), 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396, HN2 government officials performing discretionary functions are shielded from liability for civil damages only where their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have knowledge. Sacco v. High Country Indep. Press, 271 Mont. 209, citing Harlow, 457 U.S. at 818. It is impossible to regulate with black-and-white guidelines because program participants present an endless combination of situations. Providers are able to question the MMP's regulatory conclusions through the administrative hearing process.

COMMENT #8: One commenter noted that the fiscal note is not accurate. It does not mention the loss of income to the university system from out-of-state students paying 17,000.00 less in tuition each. That figure is from the MSU-Bozeman tuition averages for a full-time student. That is an impact of 1.7 million per 100 who change from out-of-state resident to in-state. This commenter suggests that the department needs to choose a figure that will be about one-third of total students with card as an estimate; otherwise, the statement is fiction.

RESPONSE #8: The department disagrees with this comment. The proposed rule implements the statute, which requires Montana residency. Individuals who do not meet the combined residency requirements of 50-46-302, MCA and 1-1-215, MCA, do not qualify to participate in the Montana Medical Marijuana Program.

COMMENT #9: A provider commented that many people move into Montana with pre-existing conditions and do not have the time to wait for their Montana state identification to arrive or have a long wait time for a DMV appointment. The commenter also stated that those people are not denied their prescriptions from drug stores, why should they be denied their other medications.

RESPONSE #9: The department appreciates the provider's concern but disagrees with the conclusion. This rule accurately implements the statutes requiring Montana residency. Written certifications issued to Montana cardholders are not transferable prescriptions. Individuals who do not meet the requirements for Montana residency are not eligible to participate in the Montana Medical Marijuana Program.

COMMENT #10: The state laboratory submitted a comment to address the proposed revision to ARM 37.107.117, which removes reference to the application fee for medical marijuana testing laboratories. It appears the fee language was inadvertently removed. The state laboratory requested the fee language remain as part of the rule. The department is authorized to charge fees for testing laboratories under 50-46-344(1)(l), MCA, and the fee is necessary to help offset the costs associated with licensing and inspecting medical marijuana testing laboratories. The department's state laboratory is responsible for the licensing and inspection of medical marijuana testing laboratories.

RESPONSE #10: The department agrees with this comment. The testing laboratory licensing fee was inadvertently deleted from this rule. It has been restored in the amended proposed rules.

COMMENT #11: A commenter stated that the proposed method for measuring canopy remains too vague. Mature flowering plants may extend the diameter of growth circumference based on strain, etc.

RESPONSE #11: The department disagrees with this comment. The department's method of measurement will include all plants, regardless of strain or size, within the

dedicated growing space. It is the provider's responsibility to comply with the provider's assigned canopy tier license.

COMMENT #12: A provider submitted a comment that the provider did not understand how to distinguish low-THC, high-CBD marijuana from hemp.

RESPONSE #12: A provider may produce low-THC, high-CBD marijuana in accordance with MMP regulations. Any cannabis cultivated, manufactured, and sold by a medical marijuana provider is considered marijuana and is considered marijuana under the provider's license. The provider must track the marijuana in the state's seed-to-sale tracking system. Beginning January 1, 2021, any product marketed as hemp-CBD must be sourced from a producer who is licensed by a state or tribe with a USDA-approved hemp production plan.

COMMENT #13: A provider commented that the department inaccurately measured their square feet of cultivation space and placed them in the wrong canopy tier. This provider stated that the department's method of determining a provider's canopy tier is too open to interpretation and was being inconsistently implemented by inspectors.

RESPONSE #13: The department disagrees with this comment. The department contacted all licensed providers in advance of the January 1, 2020, statutory effective date of the new canopy tier licensing system. The department's letter was sent via U.S. mail to the physical mailing addresses licensed providers registered with the department. That letter notified all licensed providers of their tentatively assigned canopy tier and set a 30-day deadline. That letter instructed providers to contact the department within 30 days if a provider disagreed with the tentative canopy tier designation. The department received and responded to multiple providers who contacted the department in that timeframe regarding the provider's assigned canopy tier level. As with any business, licensees are responsible for carefully reading their mail and following up with the department as necessary.

COMMENT #14: A commenter stated that CBD is legal and widely available at gas stations and many other stores. It is unfair and illegal for the MMP to prohibit providers from selling cannabidiol (CBD). Licensed Montana medical marijuana providers should not be restricted on the sale of these unregulated products, unless the over the counter (OTC) sales are also regulated.

RESPONSE #14: The department recognizes that CBD is widely sold at businesses around the state, but disagrees that it is sold legally or in compliance with the U.S. Food and Drug Administration (FDA) regulations. The FDA has approved only one CBD product, a prescription drug product to treat two rare, severe forms of epilepsy. CBD is widely available only because limited government resources have not yet caught up with regulation of products sold to the public. The FDA has issued multiple warnings to many CBD providers to immediately cease sales of many CBD items. https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/compliance-actions-and-activities/warning-letters

COMMENT #15: Commenters stated that it is unconstitutional to place restrictions on providers' sale of CBD under the Commerce Clause in Art. I, Sec. 8, United States Constitution. Only Congress can regulate interstate commerce, and laws requiring only in-state sources of products that are otherwise available in interstate commerce usurp congressional authority. Wyoming v. Oklahoma, 502 U.S. 437, 112 S. Ct. 789 (1992).

RESPONSE #15: The department disagrees with this comment. The widespread availability of CBD does not mean that CBD is legally available. The department must ensure that the program's participants, many of whom are medically fragile, do not blindly purchase products that are subject to, but not yet approved by, the FDA. The FDA has classified CBD as a drug but has not finalized its guidance for CBD. The FDA issued the following statement regarding CBD:

"We have seen many CBD products being marketed with claims of therapeutic benefit, such as treating or curing serious diseases such as cancer and Alzheimer's disease, or other drug claims, without having gone through the drug approval process. The proliferation of such products may deter consumers from seeking proven, safe medical therapies for serious illnesses, potentially endangering their health or life.

We also have serious concerns about products that put the public at risk in other ways. For example, we are aware of the risks posed by product contaminants such as heavy metals, THC or other potentially harmful substances. We also have significant concerns about products marketed with false claims or statements such as omitted ingredients, incorrect statements about the amount of CBD, products marketed for use by vulnerable populations like children or infants, and products that otherwise put the public health at risk.

As we move forward, we are currently evaluating issuance of a risk-based enforcement policy that would provide greater transparency and clarity regarding factors the agency intends to take into account in prioritizing enforcement decisions. Any enforcement policy would need to further the goals of protecting the public and providing more clarity to industry and the public regarding the FDA's enforcement priorities while we take potential steps to establish a clear regulatory pathway."

https://www.fda.gov/news-events/press-announcements/fda-advances-work-related-cannabidiol-products-focus-protecting-public-health-providing-market

See also: https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis

Because guidance from the FDA is not yet final, the department recognizes the difficulty in regulating CBD by any agency. To allow providers adequate time to adjust, the department has amended the proposed rule to include a phase-in period. Additionally, the department has removed the requirement that the CBD be sourced

from Montana hemp and instead be sourced from hemp produced by a USDA-approved hemp production plant.

COMMENT #16: A commenter stated that DPHHS does not have rulemaking authority over the Department of Agriculture and hemp. Rulemaking authority comes from 50-46-344, MCA. This provision is limited to those areas expressly set forth in the MMA and does not reach the areas of products that do not contain medical marijuana.

RESPONSE #16: The department agrees that it does not have regulatory authority over the Montana Hemp Program. The department does have regulatory authority over medical marijuana providers. Pursuant to 50-46-344(1), MCA, "The department may adopt rules…to specify: (d) the security and operating requirements of dispensaries." The program is limited in its scope and serves medically fragile people who need products from safe supply lines.

COMMENT #17: A comment was received that without access to CBD, many people will be unable to obtain relief from their chronic conditions. Many people will be in a position of having no relief from their chronic conditions, increasing burden on the state and pushing people back towards opioids for relief. This feels like an extremely drastic step backwards, when you could simply require that testing results be made accessible to people purchasing CBD products.

RESPONSE #17: The department has amended the proposed rule to include a phase-in period and to allow CBD sourced from USDA-compliant suppliers. If providers are interested in producing CBD, providers can produce low THC, high CBD marijuana for cardholders. Those interested in CBD may obtain a medical marijuana card and participate in the program by purchasing tracked, tested, safe medical marijuana products.

COMMENT #18: One commenter stated that the department does not have the authority to prohibit the sale of hemp flower in medical marijuana dispensaries. They suggested that the department could use strip testing onsite to differentiate between marijuana and hemp.

RESPONSE #18: The department does have regulatory authority over medical marijuana providers. Field strip testing is not a practical option at this point. The department did discuss testing with the Department of Agriculture, and strip tests are both imprecise and extraordinarily expensive. The strip tests have a large margin of error that would not allow a tester to distinguish hemp from marijuana.

COMMENT #19: A provider submitted a comment that it is not always practical or safe for employees to wear their agent badges on the outermost portion of their clothing. This comment stated that even a clipped badge can get in the way of an employee's tasks. The provider also stated that it places an employee in danger if that employee is delivering marijuana to a cardholder; identifying that person as a marijuana employee puts the employee at risk for robbery.

RESPONSE #19: It is important for everyone to be able to immediately identify an individual as an employee of a medical marijuana dispensary. There are methods of fastening the badge in ways that allow it to be visible but out of an employee's way. Many business employees incur risk in the course of their employment and employers use many methods to increase safety and decrease risk.

COMMENT #20: A testing laboratory commented that the wording in ARM 37.107.128(3) was confusing because it did not specify that the amounts referred to THC and not to total amount of the product itself.

RESPONSE #20: The department agrees with this comment. The department amends the language specifying equivalency to reflect that amounts are of THC.

COMMENT #21: The department received numerous comments stating that the monthly and daily purchase amounts are arbitrary numbers that do not allow for adequate treatment of all ailments. It appears that the department is placing stricter rules on medical to shift everyone into the recreational market for the purpose of generating more tax revenue.

RESPONSE #21: The department disagrees with this comment. The five-ounce maximum purchase limit was established by the legislature and is set forth by statute, 50-46-319, MCA. The administrative rules cannot increase or change this amount. The department carefully researched appropriate amounts for those cardholders who submit a petition. The Colorado study upon which the department bases this rule is the most recent science it has obtained or received. The proposed increased amount allowed by an approved cardholder petition aligns with what other states allow.

COMMENT #22: A large number of comments asserted that the department should not rely on the Colorado study to set the MMP equivalencies.

RESPONSE #22: The Marijuana Equivalency in Portion and Dosage study referenced in this rulemaking process utilized data taken from 28,023 laboratory test samples. Senate Bill 265 established product testing standardization practices and placed oversite responsibility on the state laboratory, 50-46-304, MCA. While significant progress towards achieving the goal of standardized testing practices has been made, administrative rule changes to testing requirements were only finalized in October of 2019. Montana standardized testing data is in too early of a developmental stage to be used as a comparison to the Colorado study. No other peer-reviewed studies were submitted for department consideration.

COMMENT #23: One commenter suggested that the department use the physical equivalencies from the Colorado study to set equivalency amounts.

RESPONSE #23: As cited in the Colorado study, the dosing relationships between uptake methods can be quite different from the physical weight relationships. The

bioavailability of THC in delivery methods, pharmacokinetic effects, as well as the diverse and changing nature of products must be taken into consideration when determining equivalency.

COMMENT #24: Multiple commenters expressed concern that the proposed rule did not allow for sufficient amounts of marijuana-infused edible products.

RESPONSE #24: The proposed equivalencies allow for the purchase of 32 25mg edible products per day or 160 25mg edible products per month. With an approved petition to obtain 8 ounces of usable marijuana per month, a cardholder's monthly limit allows purchase of 256 25mg edible products per month.

COMMENT #25: A cardholder submitted a comment that he will not be able to obtain sufficient amounts of Rick Simpson Oil (RSO) under the equivalency for marijuana-infused edibles.

RESPONSE #25: The department classifies RSO as a concentrate. A cardholder may obtain 40 grams of RSO per month with a 5-ounce purchase limit and 64 grams per month with an approved petition for increase in monthly purchase limit.

COMMENT #26: A commenter stated that it is disproportional for a self-provider to legally possess 16 ounces of usable marijuana when all other cardholders may only purchase 5 ounces per month and may only possess one ounce at any point in time. Allowing a self-provider to possess 16 ounces encourages diversion.

RESPONSE #26: These differing amounts reflect the reality that harvesting a marijuana plant yields more than 5 ounces of usable marijuana. A self-provider may possess up to four flowering marijuana plants. Allowing a self-provider to possess 16 ounces provides relief from potential failed crops or other reasonable problems. Self-providers are not allowed to share their marijuana with anyone else, registered cardholders or otherwise. Any provider or cardholder who diverts marijuana is in violation of the law and subject to prosecution as well as revocation of their license and/or card.

COMMENT #27: A physician submitted a comment expressing concern about having physicians "prescribe" higher amounts than allowed by the rules. It is the physician's role to certify to the state and DPHHS that patients meet the medical indications for applying to the medical marijuana program. It is not a physician's role to prescribe marijuana to patients. Patients who think they need more than allowed by the rules should petition DPHHS directly.

RESPONSE #27: The department is aware of the federal case law that allows a physician to recommend that a patient use medical marijuana but prohibits a physician from prescribing it. Again, this is a legislative directive, codified by 50-46-319, MCA. Per statute, "A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification

that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit." 50-46-319 (1)(d)(i), MCA. The physician does not "prescribe" any specific dosage. Rather, a physician "confirms" the registered cardholder's request.

COMMENT #28: A provider stated that providers who use a third-party vendor for tracking and point-of-sale cannot report to METRC instantly. For example, MJ Freeway only syncs with METRC every 15 minutes. MJ Freeway is a state-approved third-party software.

RESPONSE #28: This proposed rule meets the requirements of 50-46-304, MCA. A provider makes a business decision to use third-party software; it is not a state requirement to do so. In order to avoid sales that exceed statutory limits, the department must require that providers record sales in real time.

6. The department intends for the adoption and amendment of these rules to be retroactively effective to January 1, 2020.

/s/ Bree Gee
Bree Gee
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

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

In the matter of the amendment of ARM 37.82.402 pertaining to residency	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 27, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-914 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 563 of the 2020 Montana Administrative Register, Issue Number 6.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to April 1, 2020. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 5, 2020.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

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 and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- 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; and
- 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 March 31, 2020. This table includes notices in which those rules adopted during the period November 22, 2019, through April 30, 2020, 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 March 31, 2020, 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 2019 and 2020 Montana Administrative Registers.

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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