

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 37.40.1018 and 37.40.1127 ) AMENDMENT  
pertaining to Community First Choice )  
services and self-directed personal ) NO PUBLIC HEARING  
care services ) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rules.

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 November 23, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.40.1018 SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES:  
PROVIDER REQUIREMENTS (1) through (6) remain the same.

~~(7) Effective January 1, 2015, self-directed CFCS provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check.~~

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

37.40.1127 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:  
PROVIDER REQUIREMENTS (1) through (6) remain the same.

~~(7) Effective January 1, 2015, self-directed PAS provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in~~

~~aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check.~~

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes amending the above-stated rules to remove the requirement for self-directed personal assistance service providers and self-directed Community First Choice providers to make quarterly reports of personnel information to the department. These proposed rule amendments are necessary to align with an April 14, 2017, decision issued by the Montana First Judicial District Court in the case of *Summit Independent Living, et al. v. State of Montana Department of Public Health and Human Services* (Lewis and Clark County Cause No. CDV-2015-620), in which the district court found the reporting requirements constituted an unlawful delegation of legislative authority. See Memorandum and Order on Cross-Motions for Summary Judgment. The district court subsequently entered final judgment on October 31, 2017, declaring the reporting requirements to be invalid. The department did not appeal the district court's ruling.

Since entry of the district court's order and judgment, the department has not enforced the reporting requirements. By amending the rules to remove the reporting requirements, the department aims to ensure the rules align with the district court's decision and reflect the fact that the department is not requiring providers to adhere to the reporting requirements. The proposed rule amendments are intended to promote clarity and consistency for all stakeholders involved.

#### Fiscal Impact

The proposed rule amendments have no anticipated fiscal impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 15, 2023. Comments may also be faxed to (406) 444-9744 or e-mailed to [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

6. 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 Bailey Yuhas at the above address no later than 5:00 p.m., December 15, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10% 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 one person based on there being a total of 18 enrolled self-directed personal assistance service providers and self-directed Community First Choice providers.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in paragraph 5.

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State November 7, 2023.