

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.34.1902 pertaining to ) PROPOSED AMENDMENT  
Applied Behavior Analysis Services )

TO: All Concerned Persons

1. On June 15, 2023, 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82763580915?pwd=SFRaMHkzaHUxOGZTSIJ1cTFETm9SZz09>, meeting ID: 827 6358 0915, and password: 925218; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 827 6358 0915, and password: 925218. Find your local number: <https://mt-gov.zoom.us/u/kedP41NOnB>.

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 June 1, 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, Montana, 59604-4210; telephone (406) 444-3026; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

37.34.1902 DEFINITIONS The definitions applicable to Applied Behavior Analysis (ABA) therapy services are as follows:

(1) through (9) remain the same.

(10) "Diagnostic evaluation" means an evaluation performed by a qualified health care professional with expertise in the diagnostic area, that establishes the qualifying diagnosis- through interview, observation, and formal assessment tools appropriate to the condition for which services are requested. The qualified health care professional with expertise in the diagnostic area may use assessments from professionals outside of their fields to obtain information that contributes to the diagnostic process.

(11) "Eligibility criteria" means those criteria established for the purposes of the program of ABA services authorized by the department, as specified in the Montana Medicaid Applied Behavior Analysis Services Manual (ABA Services ~~m~~Manual), dated ~~September 24, 2022~~ July 1, 2023. The department adopts and

incorporates by reference the ABA Services ~~m~~Manual which provides the public with greater detail about ABA services. Any conflict between these rules and what is outlined in the ABA Services ~~m~~Manual should be resolved in favor of what is written in these rules. A copy of the manual may be accessed on the DPHHS website at the following link:

<https://medicaidprovider.mt.gov/manuals/appliedbehavioranalysiservicesmanual> or a paper copy may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <https://medicaidprovider.mt.gov/76>.

(12) "Functional impairment criteria" are defined in the ABA Services ~~m~~Manual.

(13) and (14) remain the same.

(15) "Qualified health care professional with expertise in the diagnostic area," for the purpose of Montana Medicaid ABA therapy services, refers to ~~one of the following~~ a licensed professional with formal training in child and adolescent psychiatric diagnosis and treatment, and has training specific to SED and ASD. A qualified health care professional with expertise in the diagnostic area must belong to one of the following categories:

(a) remains the same.

(b) general psychiatrist ~~with child and adolescent experience;~~

(c) psychiatric mental health nurse practitioner ~~with child and adolescent experience;~~

(d) developmental pediatrician; ~~or~~

(e) neurologist;

~~(e)~~ (f) neuropsychologist or psychologist;

(g) pediatrician;

(h) family physician;

(i) family or pediatric nurse practitioner;

(j) physician assistant;

(k) clinical professional counselor; or

(l) clinical social worker.

(16) and (17) remain the same.

(18) "Serious emotional disturbance" (SED), for the purposes of the program of ABA services authorized by the department, is a mental disorder as defined in the Clinical Guidelines chapter of the ABA Services ~~m~~Manual.

(19) "Treatment plan" means an individualized written document that has been developed from the BIA and contains all the critical features listed in the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition (ABA Treatment of ASD: Practice Guidelines) issued by the Behavior Analyst Certification Board, Inc.<sup>®</sup> (BACB) and/or Council of Autism Service Providers. The department adopts and incorporates by reference the ABA Treatment of ASD: Practice Guidelines, which provides guidelines and other information about ABA treatment for ASD. A copy is available for public inspection at the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental

Disabilities Program, located at 111 N. Sanders, Helena, MT 59604-4210 and is available online at <https://casproviders.org/wp-content/uploads/2020/03/ABA-ASD-Practice-Guidelines.pdf> [https://assets-002.noviams.com/novi-file-uploads/casp/pdfs-and-documents/ASD\\_Guidelines/ABA-ASD-Practice-Guidelines.pdf](https://assets-002.noviams.com/novi-file-uploads/casp/pdfs-and-documents/ASD_Guidelines/ABA-ASD-Practice-Guidelines.pdf).

(20) remains the same.

AUTH; 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1902.

ARM 37.34.1902 lists who is authorized to establish a qualifying diagnosis for the continuation of ABA services after an initial 180 days of allowed services. The current list includes child and adolescent psychiatrists, general psychiatrists with child and adolescent experience, psychiatric mental health nurse practitioners with child and adolescent experience, developmental pediatricians, and neuropsychologists or psychologists. The department received feedback from the medical community that a number of these professionals do not have adequate specialized training to make certain diagnoses. They further explained that some professionals not included in the current list are qualified to establish a diagnosis for the continuation of ABA services. Additionally, Autism Spectrum Disorder (ASD) is a diagnosis that is eligible under the Children's Mental Health Bureau's (CMHB) state plan services as a serious emotional disturbance (SED) diagnosis, and in the CMHB Manual, any licensed mental health professional is qualified to make a qualifying diagnosis.

The department is proposing to expand the list of persons who are eligible to establish a qualifying diagnosis. The reason for expanding the list of qualified professionals is to reduce the interruption in services by allowing for the timely completion of the qualifying diagnosis by a qualified professional with expertise in the diagnosis area. Further, it will establish consistency between the Developmental Disabilities Program (DDP) and CMHB programs.

ARM 37.34.1902 also adopts and incorporates into rule the department's Applied Behavior Analysis (ABA) Manual which will need to be updated to reflect the proposed changes stated above. The department proposes to amend ARM 37.34.1902 to adopt the updated manual.

#### Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-3026; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., June 23, 2023.

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

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

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

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

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

11. 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/ Rachel Raymond  
Rachel Raymond  
Rule Reviewer

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

Certified to the Secretary of State May 16, 2023.