

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.702, 37.40.1017,)
37.40.1407, and 37.90.406 pertaining)
to HCBS Setting Regulations)

TO: All Concerned Persons

1. On December 22, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1032 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1785 of the 2023 Montana Administrative Register, Issue Number 24.

2. The department has amended the following rules as proposed: ARM 37.34.702, 37.40.1017, 37.40.1407, and 37.90.406.

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 an inquiry about the applicability of heightened scrutiny to a supportive housing building owned by a community provider.

RESPONSE #1: As part of the HCBS Final Rules, CMS has defined settings presumed not to be home and community-based, and these will need to undergo heightened scrutiny (HS). These settings include 1) settings located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment; 2) settings in a building on the grounds of, or immediately adjacent to, a public institution; and 3) any other settings that effectively isolate individuals receiving Medicaid HCBS from the broader community of individuals also receiving Medicaid HCBS services. If a building does not meet the above criteria, heightened scrutiny does not apply.

COMMENT #2: A commenter asked how does the state envision enhancing community choice, community inclusion, dignity of risk, as well as person centered planning and services throughout Medicaid HCBS service systems.

RESPONSE #2: The department appreciates the question. The department is committed to a continuous improvement process to enhance the choice, inclusion, and dignity rooted in HCBS. This includes meeting the settings requirements to ensure that Medicaid-supported individuals received the same services as individuals for whom there are other sources of payment. The department has implemented provider self-assessments, validation visit tools, staff and member

interviews when necessary and is conducting onsite visits to ensure compliance with the federal and state settings regulations.

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

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

Certified to the Secretary of State March 12, 2024.