

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 37.90.402, 37.90.403,) ADOPTION
37.90.406, 37.90.408, 37.90.409,)
37.90.410, 37.90.412, 37.90.425,)
37.90.433, 37.90.434, 37.90.439, and)
37.90.449 and the adoption of NEW)
RULES I and II pertaining to Mental)
Health Medicaid Funded 1115 and)
1915 Waivers)

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1034 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1004 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rules as proposed: ARM 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.409, 37.90.425, 37.90.433, 37.90.434, 37.90.439, and 37.90.449.

3. The department has adopted the following rules as proposed: NEW RULES I (37.90.462) and II (37.90.463).

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:

37.90.410 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CONSIDERATION FOR PROGRAM ELIGIBILITY AND ENROLLMENT SELECTION (1) through (5) remain as proposed.

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

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

LOI criteria. In addition, the case management teams will confirm, through the approved documentation process with the Office of Public Assistance (OPA), each individual meets the financial/non-financial Medicaid eligibility criteria prior to enrolling the individual into the SDMI program. everyone's ongoing Medicaid eligibility, ongoing need for at least two SDMI HCBS waiver program services, and continued LOC and LOI criteria.

(8) remains as proposed.

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

(b) the case management team determines that the service providers necessary to deliver at least two SDMI HCBS waiver program services requested by the applicant are unavailable. Unavailable means when there is no provider who has said the provider has the staff and resources to serve the applicant in the applicant's current or requested area and who would accept the applicant if the applicant was enrolled in the SDMI program. Unavailable is established on the date of the quarterly review. The SDMI HCBS waiver program meals service does not count towards the two services;

(c) through (10)(c) remain as proposed.

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

(e) through (11) remain as proposed.

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

IMP: 53-6-402, MCA

37.90.412 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PERSON-CENTERED RECOVERY PLAN (1) through (3)(b) remain as proposed.

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

(d) through (10) remain as proposed.

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

IMP: 53-6-402, 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: In reference to ARM 37.90.410(6), a commenter asked, "What will the requirement of AWARE be in assisting applicants in securing non-waiver supports or services?"

RESPONSE #1: With this comment, the department recognizes the need for further clarification in (6). Therefore, the department has revised ARM 37.90.410(6) by removing the last sentence of the subsection to remove the case management team's obligation to assist in finding non-waiver services to applicants on the wait list. While on the SDMI HCBS waiver program wait list, applicants who are Medicaid members may receive Medicaid non-waiver targeted case management (TCM) to assist with referral and linkage to available non-waiver supports and services. However, the SDMI HCBS waiver case management team is not responsible to link the applicant to the services.

COMMENT #2: In reference to ARM 37.90.410(6), a commenter asked, "Can the department please clarify when a member is considered eligible and enrolled in waiver case management services?"

RESPONSE #2: As defined in proposed ARM 37.90.403(5), "'Enrolled member' means an individual enrolled in the SDMI program and authorized to receive services under the SDMI program." Individuals on the SDMI wait list are not enrolled members of the program and may not receive SDMI waiver services.

COMMENT #3: In reference to ARM 37.90.410(6), a commenter asked, "How will AWARE be reimbursed for providing case management to individuals not deemed eligible for the waiver?"

RESPONSE #3: As noted in response #1, the department has clarified the case management team's responsibilities by deleting the last sentence in ARM 37.90.410(6). With that change, the rule no longer obligates the SDMI HCBS waiver case management team to assist in finding non-waiver services to wait list applicants. Wait list members who are Medicaid members may receive non-waiver supports or services.

COMMENT #4: In reference to ARM 37.90.410(6), a commenter asked, "Has the department considered transitioning waiver case management to a state plan targeted case management model?"

RESPONSE #4: Targeted case management is a service available for a Medicaid member on the SDMI wait list. The SDMI case management service is available for those enrolled in the SDMI waiver program. The department does not see a need to transition SDMI case management to a state plan targeted case management model.

COMMENT #5: In reference to ARM 37.90.410(7), a commenter asked, "What are the expectations of MPQH to provide updated information to AWARE?"

RESPONSE #5: In general, the SDMI level of care (LOC) is valid for 90 days and the level of impairment is valid for one year. If during the quarterly review, the SDMI HCBS waiver case management team (CMT) suspects that the member's level of care has changed, the SDMI HCBS waiver CMT will submit a request to Mountain

Pacific to complete a new LOC. This process aligns with the SDMI HCBS approved waiver and is reflected in SDMI HCBS Policy 110.

COMMENT #6: A commenter asked, "How will AWARE access Medicaid information for individuals on the wait list when they are not yet enrolled in waiver services? What steps is AWARE expected to take if Medicaid ineligibility for a wait list individual is verified?"

RESPONSE #6: The department has reviewed the comment and potential limitations for the SDMI contracted case management teams to access Medicaid eligibility status for individuals on the SDMI wait list. The department has revised ARM 37.90.410(7) to explain the process to be used to determine a wait list individual's Medicaid eligibility status.

COMMENT #7: In reference to ARM 37.90.410(8), a commenter stated: "SDMI Waiver Policy 110 requires that the CMT is to make contact once per quarter. Contacting twice per quarter will double the work that the referral coordinator currently does which is not a billable service. Can the department please clarify if this direction is congruent with SDMI HCBS Policy 110? (How often do case managers need to contact any individual on the wait list?) Can the department please clarify if this direction is congruent with SDMI Waiver Policy 110?"

RESPONSE #7: The department acknowledges the comment and has revised ARM 37.90.410(8) to provide for once per quarter contact with wait listed individuals. This change more closely aligns with the SDMI case management team contract and SDMI HCBS Policy 110.

COMMENT #8: In reference to ARM 37.90.410(1)(e)(i), a commenter asked, "Can the department provide more justification for denying meals as the second service?"

RESPONSE #8: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver which has been approved by the U.S. Centers for Medicare & Medicaid Services (CMS). The waiver, as approved by CMS, requires a documented need for at least two SDMI HCBS waiver services, but stipulates the meals service does not count towards the two services.

COMMENT #9: A commenter asked, "Will the department clarify what is meant by meal services not being a second service applicants and waiver members can choose if eligible for the SDMI waiver?"

RESPONSE #9: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver which requires documented need for at least two SDMI HCBS waiver services, but stipulates the meals service does not count towards the two services.

COMMENT 10: A commenter asked in relation to ARM 37.90.410(8)(b), "Can the department clarify 'unavailable' for what period of time or by location?"

RESPONSE #10: The department acknowledges the comment and has revised ARM 37.90.410(8)(b) to include language explaining what constitutes "unavailable" services. The new language states that unavailable means no provider has said the provider has the staff and resources to provide the services to the applicant in the applicant's current or requested residential area and who would accept the applicant if the applicant was enrolled in the SDMI program.

COMMENT #11: A commenter stated, "The refusal to spend down is clear. Where a person encounters barriers to spend down or spend down in the expected timeframe, members should be determined on a case-by-case basis. Would the department remove 'or cannot' from the rule?"

RESPONSE #11: The language as proposed and adopted by this notice is necessary to require spend down in order to be Medicaid eligible. If an individual does not spend down, the person is not eligible for Medicaid. Medicaid eligibility is a requirement for the SDMI waiver program, as outlined in the waiver application filed with CMS.

COMMENT #12: A commenter asked in relation to ARM 37.90.410(8)(g), "This has been completed with Medicaid redetermination which has led to hundreds of members losing Medicaid due to no fault of their own. Will the department create a process for individuals who are eligible for the waiver be reviewed in a timely manner as to not deny services to members? How will the department notify AWARE when a member becomes ineligible for Medicaid?"

RESPONSE #12: The Office of Public Assistance (OPA) manages the Medicaid redetermination process and notification to members regarding the redetermination process. AWARE has access to the Medicaid portal to verify an individual's Medicaid eligibility each month.

COMMENT #13: In relation to ARM 37.90.410(9), a commenter stated, "The department's efforts to streamline the process and reduce wait list times is welcomed. Currently, it can take anywhere from one to six months for OPA to approve an MA55. Some members are seeking residential services which may take longer than six months to identify and secure a provider due to the provider shortage in the state. How will AWARE request approval to extend an individual's time on the wait list? What will the timeframe be for the department to approve or deny a request for extension? What criteria will be used to determine the approval or denial of a request for extension?"

RESPONSE #13: Requests to exceed the six consecutive months will be submitted by the SDMI contracted case management team to designated SDMI program staff. The SDMI contracted case management team will receive a response within ten business days. The criteria for an extension will be determined by the program for applicants whose waiver eligibility is pending a determination from the OPA.

COMMENT #14: A commenter asked in relation to ARM 37.90.410(10)(b), "Would the department consider modeling the rule for waiver members similar to the 0208 Waiver that provides a temporary suspension of services for extenuating circumstances such as a hospitalization and provide a 90-day window prior to discharge to re-engage the member? Could the department clarify how service termination is to occur and if that process requires the provider to refer and ensure health and safety needs are met?"

RESPONSE #14: While receiving services in a hospital, an individual has no need for and is not eligible to participate in waiver services. If the member is discharged from the waiver, the individual may pursue state plan services while on the SDMI wait list. The OPA has expedited waiver eligibility processing for those discharging from the Montana State Hospital to the SDMI program. Service termination is outlined in ARM 37.90.420 and SDMI HCBS Policy 145. Although ARM 37.90.420 indicates the department provides notice, SDMI HCBS 145 specifies the case management team provides notice. The department will be updating the policy to align with rule.

COMMENT #15: In relation to ARM 37.90.412(3), the commenter asked, "Would the department revise the timeline for the completion of the psychosocial strengths assessment and the PCRCP to 30 days from the enrollment date? Would the department clarify all timeline expectations to include initiation, completion, and submission to the department for review? How will the department address the contradictions in rule, policy, and contract?"

RESPONSE #15: The department acknowledges the comment and has revised ARM 37.90.412(3) to clarify the timeline expectations.

COMMENT #16: In relation to ARM 37.90.412(8), a commenter asked, "What is the timeline for the CPO to approve and notify AWARE of the approval?"

RESPONSE #16: If the initial PCRCP is found to meet program criteria, the department must approve the PCRCP within 30 days of enrollment into the care management system. If the annual PCRCP or changes to the PCRCP meet program criteria, the department must approve within 30 days of submission of the review/change to the department.

COMMENT #17: A commenter asked in relation to ARM 37.90.425(3)(b), "AWARE asks for the department to change 'for every' to 'at least' to support current staffing needs."

RESPONSE #17: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver and the case management contract. The requirement for "every" is supported in the waiver application and the case management contract. Case management team requirements are found in Appendix D: Participant-Centered Planning and Service Delivery D-1: Service Plan Development.

COMMENT #18: In relation to ARM 37.90.425(4), a commenter asked, "AWARE has limited ability to request and access to monthly utilization reports as that would require all SDMI Waiver providers submit monthly reports to the document created 'in-house.' AWARE is uncertain as to why the organization would be required to provide this information as BHDD can complete reports on the entire system of care, due to the over-arching authority of DPHHS. Does the current data management system allow for the collection of and reporting of this information? Would the department please clarify the intent, direction, and process for meeting this rule?"

RESPONSE #18: The reporting requirements for SDMI's case management team entity is outlined in the case management contract, the CMS-approved SDMI HCBS waiver application and support the program's requirement to ensure quality measures are met. In addition, the case management team's submission of monthly utilization reports will provide the program staff with the data necessary to evaluate historical and estimated expenditures against current expenditures to identify utilization patterns which may be associated with budget under/overutilization.

COMMENT #19: A commenter asked, "NCILS also has questions regarding the SDMI wait list because NCILS assumes that many of the services offered in regards to behavioral health intervention and crisis services come with specialized training and if an individual is not currently receiving waivers or resources or is on the waiting list what is meant by similar services in the community that would help individual and support system to live in the community."

RESPONSE #19: Individuals on the wait list with Medicaid eligibility may have continued access to state plan services including targeted case management (TCM) which may be available to refer applicants to non-waiver supports or services.

COMMENT #20: A commenter shared, "NCILS is very excited to support and applauds the person-centered recovery planning process. Having a member or prospective applicant at the center of their medical and social community building will allow them to utilize supports to stay in Montana communities."

RESPONSE #20: The department appreciates the comment.

COMMENT #21: A commenter asked, "Given the fact that members may need to readjust medication or have extended facility stays at times for different issues, what will be the role of the SDMI HCBS waiver team as the legally responsible person or individual in facilitating both crisis intervention options in community and if a member or prospective applicant needs community services following a hospitalization for crisis stabilization?"

RESPONSE #21: Neither the SDMI program staff nor the SDMI case management team may assume the role of legally responsible person or individual for an SDMI applicant or member due to conflict of interest standards. Non-waiver individuals may pursue Montana's targeted case management services and other state plan

services to assist with community services following hospitalization for crisis stabilization.

6. Upon review of comments, the department intends to avoid retroactive implementation of certain portions of the rule changes. The new rules and the amended rules in this notice are effective the day after publication.

/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 September 10, 2024