

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 37.34.907 pertaining to) PROPOSED AMENDMENT
Medicaid Home and Community-)
Based Services Program)

TO: All Concerned Persons

1. On July 27, 2023, at 11:00 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/84236457336?pwd=THYzNWtScDdWdGpEaXFGZUYrQVlzQT09>, meeting ID: 842 3645 7336, and password: 667928; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 842 3645 7336, and password: 667928. Find your local number: <https://mt-gov.zoom.us/u/kdUGzqSxnK>.

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 July 13, 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) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.34.907 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SELECTION AND ENTRY (1) through (4) remain the same.

(5) Within five working days from the date of the notification letter, the department designee must present all waiver service options available to the person selected, ~~and~~ document which providers the person requests to meet, and submit to the providers:

(a) through (9) remain the same.

(10) The department may prioritize and select a person who has a life-threatening physical condition, is eligible for DDP services, and ~~that without services would jeopardize their continued existence~~ whose continued existence would be jeopardized without services.

(11) and (11)(a) remain the same.

~~(b) death or inability of the person's primary caregiver to provide care and no alternative caregiver is available~~ the death of the person's primary caregiver, or the inability of that caregiver to provide care, and no alternative caregiver is available; or

(c) lack of appropriate placement for the person due to loss of housing or imminent discharge from the temporary placement or hospitalization; or

(d) non-waiver services are insufficient to meet the severe and persistent clinical and treatment needs of the person due to a crisis or emergency situation that is currently threatening the person's life or safety. In the absence of a waiver slot, the person is at risk of an out of home placement, such as an institution or higher level of care.

(12) through (14) remain the same.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.907 pertaining to the selection and entry into the Home and Community Based Services (HCBS) Waiver.

The HCBS Waiver appendix B, approved 4/21/2022 by the Center for Medicare & Medicaid Services (CMS), grants the department the right to select an individual on the Waiver waiting list due to a crisis or emergency that threatens institutionalization. The Developmental Disabilities Program (DDP) is proposing to amend ARM 37.34.907 to allow persons on the waiting list, who are at risk of institutionalization due to the insufficiency of non-waiver services, an emergency reserved capacity slot. This amendment is necessary because the threat of institutionalization meets the emergency criteria approved by CMS.

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) 444-4094; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 4, 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. Written request may be mailed or delivered to the contact person in paragraph 5.

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 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 June 27, 2023.