

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 37.27.902, 37.86.4401,) PROPOSED AMENDMENT AND
37.87.102, 37.87.702, 37.88.101,) ADOPTION
37.89.201, 37.106.1902,)
37.106.1936, 37.106.1956 and the)
adoption of NEW RULE I pertaining)
to Clinical Mental Health Licensure)
Candidate Medicaid Service)
Reimbursement)

TO: All Concerned Persons

1. On March 15, 2024, 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 and adoption of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/83315896029?pwd=akdjN3BTZHovUFI0TIViYW9FRnQ5UT09>, meeting ID: 833 1589 6029, and password: 461059; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 833 1589 6029, and password: 461059. Find your local number: <https://mt-gov.zoom.us/j/83315896029>.

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 March 1, 2024, 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 rules as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual 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 (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual 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 (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS (1) remains the same.

(2) "Baseline PPS rate" is defined as an RHC's or FQHC's current prospective payment system (PPS) rate established in accordance with ARM 37.86.4413, 37.86.4420(2), 37.86.4409, or 37.86.4410, as adjusted annually by the Medicare economic index (MEI).

(3) through (7) remain the same.

(8) "Health professional" means ~~services furnished by a:~~

(a) through (h) remain the same.

(i) licensed addiction counselor (LAC); ~~and~~

(j) clinical pharmacist practitioner; ~~and~~

(k) in-training mental health professional, as defined in [NEW RULE I].

(9) through (18) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.102 MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) "In-training mental health professional services" refers to services provided by a licensure candidate in accordance with [NEW RULE I].

(1) through (8) remain the same but are renumbered (2) through (9).

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, ~~53-21-201, 53-21-202~~, 53-21-701, 53-21-702, MCA

37.87.702 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "~~In-training mental health professional services" are services provided under the supervision of a licensed mental health professional by an individual who has completed all academic requirements for licensure as a psychologist, clinical social worker, licensed professional counselor, or licensed marriage and family therapist and is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapters 189 and 219.~~ refers to services provided by a candidate for licensure who:

(a) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(b) is under the supervision of a licensed mental health professional approved by the candidate's licensing board;

(c) is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapter 189 or 219; and

(d) has an approved supervision plan through the candidate's licensing board.

(4) remains the same.

(5) "Mental health center services for youth with serious emotional disturbance" reimbursed by Medicaid means community-based psychiatric rehabilitation and support services, comprehensive school and community treatment programs, day treatment services, therapeutic foster care services, home support services, in-training mental health professional services, outpatient therapy services, mental health professional services, and targeted case management services.

(6) through (11) remain the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual 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 (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) through (5) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.201 NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~May 12, 2023~~ January 1, 2024, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. The department adopts and incorporates by reference the manual as part of this rule. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

AUTH: 53-2-201, 53-21-1405, MCA

IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (4) remain the same.

(5) "Community-based psychiatric rehabilitation and support" ~~is means the definition~~ as defined in ARM 37.88.901.

(6) through (9) remain the same.

(10) "Forensic mental health facility" (FMHF) means 24-hour, seven days a week, secured non hospital-based forensic psychiatric treatment for criminal justice involved adults who are committed by a court of competent jurisdiction for the purpose of psychiatric treatment or evaluation.

(11) remains the same.

(12) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.320 through 300.325, amended as of October 30, 2007. The department adopts and incorporates by reference that version of 34 CFR 300.320 through 300.325. A copy of the regulations may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(13) and (14) remain the same.

(15) "In-training mental health professional" refers to an individual providing services in accordance with in-training mental health professional services as defined in ARM 37.87.702.

~~(15)(16)~~ "In-training practitioner services mental health professional services" means the definition is as defined in ARM ~~37.88.901~~ ARM 37.87.702.

(16) remains the same but is renumbered (17).

~~(17)(18)~~ "Licensed mental health professional" means:

(a) a physician, clinical psychologist, social worker, licensed marriage and family therapist, or professional counselor licensed to practice in Montana;

(b) and (c) remain the same.

(18) through (20) remain the same but are renumbered (19) through (21).

~~(21)~~(22) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license or these same services provided by an in-training ~~practitioner~~ mental health professional in a mental health center.

(22) through (32) remain the same but are renumbered (23) through (33).

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, MCA

37.106.1936 MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT (1) through (4) remain the same.

(5) Each program therapist or in-training ~~practitioner-therapist~~ mental health professional in the program shall carry an active caseload not to exceed 12 day treatment clients. The therapist or mental health professional who carries the caseload must also provide the therapy and must be on site during the entire day treatment hours of operation unless the therapist is attending a meeting offsite that pertains to one of the day treatment client's treatment. The program supervisor may carry a caseload of up to six day treatment clients.

(6) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, MCA

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT), SERVICES AND STAFFING

(1) through (7) remain the same.

(8) Each CSCT team must include a mental health professional, who may be a licensed or in-training mental health professional, as defined in ARM 37.87.702~~(3)~~. In-training mental health professionals must be:

(a) remains the same.

(b) supervised ~~according to ARM 24.219.422~~ in accordance with ARM Title 24, chapter 219.

(9) and (10) remain the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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

NEW RULE I IN-TRAINING MENTAL HEALTH PROFESSIONAL SERVICES BILLING MEDICAID (1) To bill and receive reimbursement for services rendered by an in-training mental health professional, a provider must be a licensed mental health center or meet the criteria outlined in this rule.

(2) For the purposes of this rule:

- (a) "Face-to-face" has the meaning provided in ARM 24.219.301.
- (b) "In-training mental health professional" refers to an individual providing in-training mental health professional services, as that term is defined in this rule.
- (c) "In-training mental health professional services" refers to services provided by a candidate for licensure who:
 - (i) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), clinical social worker, licensed professional counselor, or licensed marriage and family therapist;
 - (ii) is under the supervision of a licensed mental health professional approved by the candidate's licensing board;
 - (iii) is in the process of completing the supervised experience requirement for licensure, in accordance with ARM Title 24, chapter 189 or 219; and
 - (iv) has an approved supervision plan through the candidate's licensing board.
- (3) The provider's practice setting must:
 - (a) provide crisis services, medication management, and outpatient mental health services;
 - (b) employ or contract with a licensed health care professional who is licensed to prescribe medication for mental health/behavioral health disorders;
 - (c) employ or contract with the licensed mental health professional who is approved by the candidate's licensing board to serve as supervisor to the candidate; and
 - (d) have at least one licensed mental health professional available for face-to-face supervision of the candidate when the supervisor is not available.
- (4) The supervisor must provide face-to-face supervision of the licensure candidate in accordance with the licensure board's approved supervision plan and as needed. The provider and supervisor may not charge the candidate for supervision. The designated supervisor must be a supervisor of record with the candidate's licensing board and have assumed responsibility for the candidate's continued training and for services provided by the candidate.
- (5) The candidate must be an employee of the provider. The provider is not permitted to contract for in-training mental health professional services.
- (6) The provider must provide professional liability insurance for the candidate's professional services.
- (7) An in-training mental health professional may not engage in independent practice.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.27.902, 37.86.4401, 37.87.102, 37.87.702, 37.88.101, 37.89.201, 37.106.1902, 37.106.1936, and 37.106.1956. In addition, the department proposes adopting NEW RULE I. These updates would expand the ability to bill the Montana

Medicaid Program for in-training mental health professional services provided to Medicaid beneficiaries.

Licensure Candidate Billing Medicaid

This proposed rule would expand the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. This proposal is in response to mental health professionals who requested the department approve additional clinical locations at which in-training mental health professional services can be reimbursed by Medicaid.

Montana Medicaid currently reimburses for in-training mental health professional services in certain settings through a combination of administrative rule and policy. Currently Montana Medicaid allows mental health centers, Tribal 638, Indian Health Services (IHS), FQHC, and urban Indian health centers to be reimbursed for in-training mental health professionals.

The department determined that expanding practice locations that can bill for in-training mental health professional services would support the Integrated Behavioral Health (IBH) model, which expands access to mental health care. These additional sites include critical access hospitals or obstetric offices. Expanding reimbursable service locations for behavioral health services would ensure this work allowing licensure candidates to be reimbursed at additional locations increased access to services in Montana.

In-training mental health professionals are at the beginning of their careers and represent the next generation of the mental health professional workforce. They are licensed clinical professional counselor (LCPC) licensure candidates, licensed clinical social worker (LCSW) licensure candidates, licensed marriage and family therapist (LMFT) licensure candidates, and psychologist postdoctoral supervisees providing services under a temporary permit.

The following explains each proposed change and the reasonable necessity:

ARM 37.27.902 – This proposed change adopts a revised provider manual that includes the expanded the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members.

ARM 37.86.4401 – This proposed change would permit rural health clinics and federally qualified health centers to be reimbursed for in-training mental health professional services provided to Medicaid members.

ARM 37.87.102 – The department proposes to include "in-training mental health professional services" terminology in this rule and refer to NEW RULE I, which explains in detail the requirements for reimbursement for the service. Implementing statutes are being stricken because they have been repealed.

ARM 37.87.702 – The department proposes to change the definition of "in-training mental health professional services" to align with language in NEW RULE I. This update will not impact in-training mental health professional services provided by a mental health center.

ARM 37.88.101 and 37.89.201 – These proposed changes would adopt the revised BHDD provider manuals that include expanded practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. The changes would affect services provided to both Medicaid members and eligible non-Medicaid members.

ARM 37.106.1902 – In this rule relating to treatment of adults in a mental health center, the department proposes to align the definition of "in-training mental health professional" with ARM 37.27.702, which is located in the subchapter relating to treatment of youth in a mental health center. This update will not impact in-training mental health professional services provided by a mental health center. The department also proposes to include licensed marriage and family therapists to the definition of licensed mental health professional to conform the rules to current practice.

ARM 37.106.1936 – The department proposes to align existing rule language with the term "in-training mental health professional," which is used and defined in these proposed rule changes.

ARM 37.106.1956 – ARM Title 24, chapter 219 has additional requirements related to supervision, and the department proposes to refer to these rules to ensure alignment with all Department of Labor and Industry licensure candidate supervision requirements.

NEW RULE I – The department proposes to adopt NEW RULE I into the subchapter that explains general Medicaid services. The department intends for the expanded practice settings to apply to all Medicaid services that meet the requirements set forth in this rule notice. NEW RULE I defines necessary language and sets forth the requirements a provider must meet to receive reimbursement from Medicaid for providing in-training mental health services to a Medicaid member.

Fiscal Impact

The following table displays the state fiscal year (SFY) 24 and SFY 25 projected fiscal impact arising from the proposal to expanding reimbursement for in-training mental health professional services in qualifying settings.

Provider Type	SFY 2024 Budget Impact (Federal Funds)	SFY 2024 Budget Impact (State Funds)	SFY 2024 Budget Impact (Total Funds)
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Mental Health Clinic	\$215,254	\$57,003	\$272,258
Critical Access Hospitals	\$52,872	\$13,487	\$66,359
Federally Qualified Health Centers	\$0	\$0	\$0
Hospitals - Outpatient	\$58,173	\$13,421	\$71,594
Group Clinics	\$259,249	\$76,597	\$335,846
Rural Health Clinics	\$0	\$0	\$0

Provider Type	SFY 2025 Budget Impact (Federal Funds)	SFY 2025 Budget Impact (State Funds)	SFY 2025 Budget Impact (Total Funds)
Mental Health Clinic	\$627,214	\$165,601	\$792,815
Critical Access Hospitals	\$143,157	\$36,410	\$179,568
Federally Qualified Health Centers	\$0	\$0	\$0
Hospitals - Outpatient	\$157,494	\$36,240	\$193,734
Group Clinics	\$702,064	\$206,736	\$908,800
Rural Health Clinics	\$0	\$0	\$0

6. The department intends these amendments to be retroactively effective to January 1, 2024.

7. 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) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., March 22, 2024.

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

9. 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 requests may be mailed or delivered to the contact person in paragraph 7.

10. 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>.

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

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

13. 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/ 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 February 13, 2024.