

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 37.40.1002, 37.40.1005, and) PROPOSED AMENDMENT
37.40.1018 pertaining to community)
first choice services)

TO: All Concerned Persons

1. On August 15, 2024, 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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81153224911?pwd=RlhUdktTNzEzTEV1WGtySldJUhdXUT09> meeting ID: 811 5322 4911, and password: 831582; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 811 5322 4911, and password: 831582. Find your local number: <https://mt-gov.zoom.us/u/keDOdao0v1>.

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 August 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 provide as follows, new matter underlined, deleted matter interlined:

37.40.1002 AGENCY-BASED AND SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: ELIGIBILITY, SERVICES PROVIDED, AND LIMITATIONS

(1) through (7) remain the same.

~~(8) CFCS may not typically be provided in group home settings unless prior authorized by the department. Group home settings include licensed youth foster homes, mental health group homes, and adult intensive community home services. CFCS may be authorized when the person's medical needs are beyond the scope of services normally provided by programs funding services in the group setting. For example, a person requiring additional assistance because of an acute medical episode or post-hospitalization period may receive CFCS in a youth foster home setting. CFCS services will be provided only in residential settings that the department determines meet the Home and Community-Based Setting requirements described in 42 C.F.R. § 441.530.~~

(9) remains the same.

(a) persons ~~who reside~~ residing in a hospital, a hospitals providing long-term care, or a long-term care facility as defined in 50-5-101, MCA, and licensed under 50-5-201, MCA;

(b) remains the same.

(c) persons who live in homes ~~which~~ that are not safely accessible by normal modes of transportation.

(10) CFCS may not include any skilled services that require professional medical training unless otherwise permitted under 37-8-103, MCA, ~~or ARM 24.159.1616.~~

(11) CFCS do not include services ~~which~~ that maintain an entire household. CFCS do not include:

(a) through (f) remain the same.

(12) ~~CFCS provided by a member of the member's immediate family is not CFCS for the purposes of the Medicaid program, and is not eligible for reimbursement. Immediate family member includes the following~~ Payment to legally responsible persons for CFCS is available when an individual requires extraordinary care. An individual is considered to require extraordinary care, as demonstrated by a state-approved functional assessment, when needs exceed the ordinary care that would be provided to a person without a disability of the same age. A legally responsible person may also be paid for services that are not considered extraordinary when an individual is unable to access non-legally responsible personal care providers because of geographic, cultural, or other factors limiting availability of care providers. A legally responsible person is defined as a:

(a) ~~a spouse; or and~~

(b) ~~a natural, adoptive, or foster parent of a minor child.~~

(13) remains the same.

(14) CFCS may not be provided to relieve a parent of child-caring or other legal responsibilities. CFCS for children with disabilities may be appropriate when the parent is unqualified or otherwise unable to provide services, and the child is at risk of institutionalization unless the services are provided.

AUTH: 53-2-201, MCA

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

37.40.1005 AGENCY-BASED AND SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: PERSON-CENTERED PLAN REQUIREMENTS (1) through (3) remain the same.

(4) The member and plan facilitator must meet to complete a person-centered plan that identifies, in writing, member-specific goals and objectives for the delivery of CFCS. The plan facilitator must ensure the person-centered plan is completed prior to service delivery and renewed at least annually. The person-centered plan must indicate that the residential setting of the member meets the Home and Community-Based Setting requirements described in 42 CFR § 441.530. The person-centered plan will be based on the member's functional assessment and service profile as provided by the quality improvement organization.

(a) through (6) remain the same.

(7) If a member is at high risk for institutionalization or in need of temporary CFCS, the provider agency may implement services immediately that include assistance with the activities of daily living without the functional assessment, service profile, and person-centered plan in place. In this case, the provider agency must implement a temporary service plan. The provider agency must use a department-approved form to document the temporary service plan. The temporary service plan must prescribe in writing the member's medical and functional need for service. The provider must refer the member to the quality improvement organization for a functional assessment by the 28th day of the temporary service plan, or they must discharge the member.

(a) In self-directed CFCS, the health care professional must complete the health care professional authorization form prior to the delivery of services, and the provider agency oversight staff must complete and sign the service plan prior to the delivery of services.

(b) through (10) remain the same.

AUTH: 53-2-201, MCA

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

37.40.1018 SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: PROVIDER REQUIREMENTS (1) through (6) remain the same.

(7) A provider of services must ensure that the services adhere to the requirements of 42 C.F.R. § 441.530, which permits reimbursement with Medicaid monies only for services within settings that meet certain qualities set forth under the regulation.

(8) For the purpose of this subchapter, the department adopts and incorporates by reference 42 C.F.R. § 441.530, as amended January 16, 2014. A copy of this regulation may be obtained at <https://www.ecfr.gov/> or by contacting the Department of Public Health and Human Service, Senior and Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-2-201, MCA

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

4. STATEMENT OF REASONABLE NECESSITY

Montana Medicaid provides Community First Choice Services under its State Plan pursuant to section 1915(k) of the Social Security Act. Community First Choice Services provide community-based attendant services and supports to eligible Medicaid enrollees. These services must comply with federal Home and Community-Based Setting requirements under 42 C.F.R. § 441.530.

The proposed rule amendments are necessary to ensure Community First Choice Services meet the requirements of 42 C.F.R. § 441.530, which is intended to ensure, among other things, individuals receiving Community First Choice Services have access to the greater community, including opportunities to seek employment and work in competitive settings, to engage in community life, to control personal

resources, and to receive services in the community, to the same degree of access as individuals not receiving such services. The proposed rule amendments are also necessary to ensure the rules align with the Community First Choice Services State Plan Amendment (MT 23-007), which was updated to align with 42 CFR § 441.530 and to allow legally responsible individuals to be paid as caregivers.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

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) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 23, 2024.

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 requests 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 rules.mt.gov.

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 rules 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/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Robert Siedlecki
Robert Siedlecki, Deputy Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 16, 2024.