

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 37.34.911, 37.34.925,	)	REPEAL
37.34.926, 37.34.929, 37.34.930,	)	
37.34.933, 37.34.937, 37.34.941,	)	
37.34.942, 37.34.946, 37.34.960,	)	
37.34.961, 37.34.963, 37.34.967,	)	
37.34.968, 37.37.974, 37.34.978,	)	
37.34.980, 37.34.981, 37.34.985,	)	
37.34.986, 37.34.987, and 37.34.988	)	
and the repeal of ARM 37.34.947,	)	
37.34.950, 37.34.951, 37.34.973, and	)	
37.34.989 pertaining to Medicaid	)	
home and community based waiver	)	
program	)	

TO: All Concerned Persons

1. On June 7, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1073 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1348 of the 2024 Montana Administrative Register, Issue Number 11.

2. The department has amended the following rules as proposed: ARM 37.34.911, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.937, 37.34.941, 37.34.942, 37.34.946, 37.34.960, 37.34.961, 37.34.963, 37.34.967, 37.34.968, 37.37.974, 37.34.978, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, and 37.34.988.

3. The department has repealed the following rules as proposed: ARM 37.34.947, 37.34.950, 37.34.951, 37.34.973, and 37.34.989.

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.34.933 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: BEHAVIORAL SUPPORT SERVICES (1) and (2) remain as proposed.

(3) Level one services may be provided by:

(a) remains as proposed.

(b) the following professionals, under the supervision of a BCBA or BCBA-D:

(b)(i) an intermediate applied behavior analysis (ABA) professional; or a  
~~person with an Institute for Applied Behavior Analysis (IABA); or~~

- (ii) a person with an Institute for Applied Behavior Analysis (IABA) certification; or
- (c) remains as proposed.
- (4) Level two services include all services identified in level one and:
  - (a) monitoring and overseeing BSS staff, including a registered behavior technician (RBT) or an intensive behavior assistant (IBA), who are directly implementing treatment; and
  - (b) remains as proposed.
- (5) Level two services may be provided by:
  - (a) and (b) remain as proposed.
  - (c) the following professionals, under the supervision of a BCBA or BCBA-D:
  - ~~(e)(i) an intermediate ABA professional; or a person with an IABA certification.~~
  - (ii) a person with an IABA certification.
  - (6) remains as proposed.

AUTH: 53-6-113, 53-6-402, MCA  
IMP: 53-6-101, 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: One commenter recommended eliminating the IABA certification option in ARM 37.34.933 because IABA does not offer a certification as described in policy or rule.

RESPONSE #1: While the department appreciates the commenter's recommendation, the removal of IABA certification of the IABA certification qualification would result in current waiver members losing access to behavior support services. Due to workforce shortages, it is important to have alternative qualifications in order to access behavioral support services. Furthermore, it is the department's understanding that the IABA advanced multi-element course is the replacement to the consultant certification. The department will convene a stakeholder workgroup to explore future alternatives to behavior support service qualifications.

COMMENT #2: One commenter recommended adding "and supervised by a BCBA or BCBA-D" for all categories of providers in ARM 37.34.933.

RESPONSE #2: The department agrees to adding the requested language to (3)(b) and (5)(c) to ensure appropriate oversight for the provision of the services. The department declines to add the language to all categories of providers because certain professionals named there have sufficient training and education so that additional supervision is not necessary.

COMMENT #3: One commenter recommended clarifying "intermediate professional" to include students working toward their BCBA or BCaBA certifications.

RESPONSE #3: The department clarifies that an intermediate professional is a graduate student who has completed basic coursework requirements for Behavior Analyst Certification Board® (BACB®) certification and is in the process of completing the experience portion of the eligibility requirements as delineated in the *Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition* issued by the BACB and/or the Council of Autism Service Providers as defined in DDP's Applied Behavior Analysis manual adopted by ARM 37.34.1902.

COMMENT #4: One commenter requested that the employment support services, including individual and community supports, reflect inclusive communities such as people with autism and developmental disabilities. The commenter suggests adopting employment first policies such as prevailing wages.

RESPONSE #4: The department thanks the commenter for the feedback. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. The 0208 Comprehensive Waiver provides a variety of supported employment services, including individual employment supports. The department will take under advisement the recommendation to pursue employment first policies.

COMMENT #5: One commenter requested additional information regarding retirement services and adult day programs.

RESPONSE #5: The department thanks the commenter for the interest in services available under the 0208 Comprehensive Waiver. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. Day supports and activities is a 0208 comprehensive waiver service and was not included in this rulemaking. Retirement services are an 0208 Comprehensive Waiver service that are available to a waiver recipient who is age 62 or older, or who has limited ability to work due to health and safety issues. This service is intended to provide leisure, social, and community integration activities to eligible individuals who wish to receive this service.

COMMENT #6: One commenter asked what role case managers have in securing community supports during community living and housing transitions. Will the waiver case managers and other service providers be allowed to offer members assistance in searching for HUD apartments or are they only able to offer living options in group and congregate settings such as assisted living?

RESPONSE #6: The department notes this rulemaking did not propose changes to case management services and this comment is, accordingly, outside the scope of this rulemaking.

COMMENT #7: One commenter asked for clarification regarding the intent of remote monitoring service in congregate assisted living and group home settings. Is the intent to monitor and track stinging behaviors, difficulties between residents, or criminal behavior?

RESPONSE #7: The department thanks the commenter for the comment. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. Remote monitoring provides oversight and monitoring within a residential setting. Remote monitoring may only be used in supported living settings for the purpose of reducing or replacing the amount of residential habilitation needed for the waiver recipient to live safely and independently in their home. The purpose of remote monitoring is not to monitor or track criminal behavior. Remote monitoring staff training requirements are included in this administrative rule update.

COMMENT #8: One commenter requested clarification on environmental modifications. If modifications cannot expand the square footage of homes or replace carpet or systems that might be integral to home ownership or apartment living, does this disallow wider hallways for wheelchairs or Hoyer lifts?

RESPONSE #8: The department clarifies that environmental modifications may not include modifications which are of general utility such as carpeting, roof repair, or central air conditioning if they are not of direct-medical or remedial benefit to the waiver recipient. Because wider hallways for wheelchairs or Hoyer lifts are of direct-remedial benefit to the waiver recipient, these modifications are allowed. Modifications must be prior approved by the department.

COMMENT #9: One commenter recommended that environmental modifications take into consideration LIHEAP's coverage of heating and cooling expenses if substantial repairs or home rehabilitation is needed and requested to be funded through waiver services.

RESPONSE #9: The department appreciates the commenter's recommendation and will take this under advisement.

/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 August 13, 2024.