

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to allocation and) PROPOSED ADOPTION
expenditure of HB 872 funds for)
capital projects)

TO: All Concerned Persons

1. On August 19, 2024, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption 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/82627745575?pwd=ub5FwWX0lrZp0nEQw2W5lgL0oUWmDI.1>, meeting ID: 826 2774 5575, and password: 207685; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 826 2774 5575, and password: 207685. Find your local number: <https://mt-gov.zoom.us/u/kdXcpwaFvG>.

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 no later than 5:00 p.m. on August 5, 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 rule proposed to be adopted provides as follows:

NEW RULE I ALLOCATION OF FUNDS APPROPRIATED TO THE DEPARTMENT OF ADMINISTRATION FOR BEHAVIORAL HEALTH SYSTEM FOR FUTURE GENERATIONS CAPITAL PROJECTS

(1) The purpose of this rule is to establish the process by which the funds appropriated to the Department of Administration (DOA) for capital projects in connection with the behavioral health system for future generations initiative will be allocated and spent under section 9, ch. 739, Montana Laws 2023.

(2) The department will use the same process for the identification and approval of capital projects and the allocation of the appropriated funds referenced in (1) for such capital projects as for the other BHSFG initiatives. If any part of such process is infeasible in the department's judgment, the department will use an equivalent alternative approach.

(3) Upon approval by the Governor of a capital project concept, a project plan for the capital project shall be developed by the department and approved by the BHSFG Commission. The project plan may be revised and updated as needed.

The funds allocated to the capital project from the amounts referenced in (1) shall be expended pursuant to the project plan.

(4) The department shall consult with the Architecture and Engineering Division of the Department of Administration on the proposed capital projects to be funded with the appropriations referenced in (1).

(5) Upon approval of a capital project concept by the Governor and approval of the project plan for an approved capital project by the BHSFG Commission, the department will notify the Department of Environmental Quality of the project for potential inclusion in the state building energy conservation program. The department will use any funds provided under the state building energy conservation program to offset or add to the allocated and authorized funding for the project.

AUTH: Sec. 4(1), Ch. 739, L. 2023

IMP: Sec. 2, 4, 9, 11, Ch. 739, L. 2023

4. STATEMENT OF REASONABLE NECESSITY

Through this rulemaking, the Department of Public Health and Human Services (department) proposes to implement the requirement in section 4 of HB 872 that it adopt administrative rules that define how the appropriations to the Department of Administration for capital projects for behavioral health system for future generations capital development will be allocated and spent.

HB 872, addressing the Behavioral Health System for Future Generations (BHSFG), was passed by the Montana Legislature during the 2023 Legislative Session and signed by Governor Greg Gianforte on May 22, 2023. HB 872 provides a generational investment to reform and improve Montana's behavioral health and developmental disabilities service systems. HB 872 provided for (1) a \$300 million investment to expand intensive and community-based behavioral health care and developmental disabilities services across Montana, (2) a commission to recommend how funds allocated to the department in the BHSFG fund should be expended, and (3) a process by which such recommendations would be reviewed and approved. Of that \$300 million, a total of \$75 million was authorized and appropriated for capital projects:

- \$20 million was appropriated to the department from the capital development long-range building program account for the biennium beginning July 1, 2023, for the acquisition of new or remodeling of existing infrastructure or property to support the establishment of behavioral health settings and intermediate care facilities for individuals with intellectual disabilities. HB 872 §§ 12(1), 3(3)(d).
- \$55 million is appropriated to the Department of Administration (DOA) from the capital developments long-range building program account for BHSFG capital development, after the adoption of the administrative rules and the BHSFG Commission transmits its summary report on its recommendations to the Governor pursuant to the process established in section 2 of HB 872. HB 872, sec. 9.

As noted above, this proposed rule would satisfy the requirements of section 4 of HB 872 (sec. 4, ch. 739, L. 2023) that the department adopt administrative rules that define how the appropriations for capital projects would be allocated and spent under section 9, on the appropriation of \$55 million to DOA for BHSFG capital projects.

NEW RULE I(1) would set forth the purpose of the proposed rule: to address how funds appropriated to DOA for BHSFG capital projects would be allocated and spent. The proposed rule would not apply to the \$20 million appropriated to the department for capital projects because, as the department interprets HB 872, the administrative rules are only to address the funds appropriated to DOA under section 9; the \$20 million were appropriated to the department under section 12(1) of HB 872.

With respect to the identification of capital projects and the allocation of DOA-appropriated funds for such projects, the department believes that it is appropriate to use the same process established in HB 872 for other BHSFG initiatives. Accordingly, in NEW RULE I(2), the department proposes to use the process set forth in section 2 of HB 872 for the identification of capital projects to be funded by the appropriation referenced in (1) of the proposed rule, as well as how the funds should be allocated among such capital projects. The department is in the process of soliciting input on potential BHSFG capital projects through the issuance of two requests for information (RFIs), and is already working with the BHSFG Commission on issues relating to capital projects. Recognizing that such process may not be wholly feasible for capital projects, the department proposes that if, in the department's judgment, any part of the section 2 process is infeasible with respect to capital projects, the department will use an equivalent alternate approach to achieve the objective.

The department proposes NEW RULE I(3) to fulfill the section 4 requirement that the administrative rules define how the section 9 appropriation would be spent. The department proposes that the funds allocated to a capital project be spent in accordance with the approved project plan for the capital project. The department further proposes the project plan could be revised and updated as needed to meet the needs of the capital project.

Since this proposed rule would establish how the appropriation to DOA for BHSFG capital projects is to be allocated and spent, NEW RULE I(4) would provide that the department will consult with DOA's Architecture and Engineering Division on the capital projects.

NEW RULE I(5) would help implement section 11 of HB 872, which requires the Department of Environmental Quality (DEQ) to review the capital projects authorized under section 9 for potential inclusion in the state building energy program by providing that the department will notify of approved capital projects. Consistent with section 11, NEW RULE I(5) provides that the department will use any state building

energy conservation program funds to offset or add to the authorized funding for the capital project.

Fiscal Impact

There are no anticipated fiscal impacts associated with NEW RULE I.

5. The department intends for NEW RULE I to be applied retroactively to July 1, 2024.

6. 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.

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

8. 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. Such written request may be mailed or delivered to the contact person in 6 above.

9. 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on July 12, 2024.

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

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 16, 2024.