

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 37.85.207 and 37.86.1201) PROPOSED AMENDMENT
pertaining to Licensed Direct-Entry)
Midwife)

TO: All Concerned Persons

1. On August 15, 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 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/83462138495?pwd=kZOagEBYrcydzdVs1cL8DwtIT120DI.1>, meeting ID: 834 6213 8495, and password: 876968; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 834 6213 8495, and password: 876968. Find your local number: <https://mt-gov.zoom.us/u/kdAkzTESZd>.

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:

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) through (2)(k) remain the same.

(l) delivery services not provided in a licensed health care facility or nationally accredited birthing center ~~unless as an emergency service, except as set forth below in (i) and (ii) of this subsection.~~ Delivery services means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. Emergency service is defined in ARM 37.82.102. The following circumstances are an exception to the exclusion set forth in this subsection:

(i) delivery services occurring as an emergency service, as defined in ARM 37.82.102; and

(ii) a planned home birth attended by a licensed nurse midwife or licensed direct-entry midwife, provided the circumstances of the delivery comply with the standards and requirements in ARM 24.111.617 and ARM 24.159.1477;

(m) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141, 53-6-402, MCA

37.86.1201 LICENSED DIRECT-ENTRY MIDWIFE (1) remains the same.

(2) Direct-entry midwives may ~~only~~ provide prenatal labor and delivery or postpartum care in a member's home or in a birthing center as defined at ARM 37.86.3001. A home birth must comply with the standards and requirements in ARM 24.111.617 and ARM 24.159.1477.

(3) through (5) remain the same.

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

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.207 pertaining to services not covered by the Medicaid program and ARM 37.86.1201 pertaining to Licensed Direct-Entry Midwife.

The reasonable necessity for proposing these rule changes is to comply with HB 655, passed by the 2023 Montana Legislature, which provides for Medicaid coverage of planned home births attended by licensed nurse midwives or licensed direct-entry midwives. The home births must comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477, which set forth the circumstances that constitute a low risk of adverse birth outcomes for planned home births attended by a nurse-midwife or a direct-entry midwife.

ARM 37.85.207(2)(l)

The department proposes adding language to carve out an exception to the list of medical services excluded from Medicaid coverage. The amended language would provide for Medicaid coverage of planned delivery services by a licensed nurse midwife or a licensed direct-entry midwife in a Medicaid member's home if the circumstances of the birth comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477. The department proposes the amendments to comply with HB 655, passed by the 2023 Montana Legislature.

ARM 37.86.1201(2)

The department proposes amending language to permit licensed direct-entry midwives to provide prenatal labor and delivery or postpartum care in a member's home in addition to a birthing center as defined at ARM 37.86.3001. The home birth must comply with standards established by the Department of Labor and Industry in ARM 24.111.617 and ARM 24.159.1477. The department proposes the amendments to comply with HB 655, passed by the 2023 Montana Legislature.

Fiscal Impact

The following table displays the anticipated financial impact during SFY 2024 through 2028.

FUNDING	SFY 2024	SFY2025	SFY2026	SFY2027	SFY2028
State - Medicaid	\$7,164	\$7,979	\$8,413	\$9,392	\$10,453
Federal - Medicaid	\$12,686	\$14,259	\$15,034	\$16,785	\$18,681
State - Expansion	\$983	\$1,101	\$1,161	\$1,296	\$1,442
Federal - Expansion	\$8,843	\$9,907	\$10,445	\$11,662	\$12,979

5. The department intends for these rule amendments to be effective retroactively to July 1, 2023.

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 telephone on June 24, 2024.

11. 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.

12. 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 July 16, 2024.