

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 37.40.1485 pertaining to Home ) PROPOSED AMENDMENT  
and Community-Based Services for )  
Elderly and Physically Disabled )  
Persons: Environmental Accessibility )

TO: All Concerned Persons

1. On January 9, 2025, 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/89255126913?pwd=U518O7EYC0kva3ztLI0zIWK3caqIkB.1>, meeting ID: 892 5512 6913, and password: 590706; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 892 5512 6913, and password: 590706. Find your local number: <https://mt-gov.zoom.us/u/kcvZi1CsjH>.

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 December 26, 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](mailto:hhsadminrules@mt.gov).

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

37.40.1485 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ENVIRONMENTAL ACCESSIBILITY ADAPTATION, REQUIREMENTS

(1) Environmental accessibility adaptations are modifications to a ~~recipient's~~ member's home, designed to maintain or improve the ~~recipient's~~ member's ability to remain at home.

(2) remains the same.

(a) modifications to a personal vehicle that allow the ~~recipient~~ member to be more independent;

(b) and (c) remain the same.

(d) facilitation of the ability of a caregiver or service provider to maintain a ~~recipient~~ member at home.

(3) remains the same.

(a) be functionally necessary and relate specifically to the recipient's member's disability;

(b) provide for the recipient's member's access to the home environment and increased independence and safety in the home;

(c) be reasonably expected to promote the recipient's member's functional ability or the ability of the caregiver to maintain the recipient member at home; and

(d) be the most cost effective adaptation among the adaptations that are available to meet the recipient's member's needs; and

(e) ~~meet the 1980 specifications set by the American national standards institute.~~ meet applicable requirements of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq. and the 2010 ADA Standards for Accessible Design. The department adopts and incorporates by reference the 2010 ADA Standards for Accessible Design, which set forth minimum standards for newly designed and constructed or altered state and local government facilities and public accommodations used by individuals with disabilities. The standards may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210 or by visiting <https://www.ada.gov/law-and-regs/design-standards/2010-stds/>.

(4) All requests for environmental accessibility adaptations must include an estimate or bid from a licensed contractor. Environmental accessibility adaptations anticipated to exceed \$5,000 in cost must include at least two estimates or bids from licensed contractors, unless prior authorization is received from the department.

(5) Environmental accessibility adaptations must be installed by a licensed contractor.

(4) and (5) remain the same but are renumbered (6) and (7).

~~(6)(8)~~ A recipient member may ~~only~~ receive any ~~one~~ environmental accessibility adaptation only once unless the department specifically authorizes the repurchase of an adaptation.

AUTH: 53-2-201, 53-6-101, 53-6-402, MCA

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.1485 pertaining to environmental accessibility adaptations to update terminology, reference current Americans with Disabilities Act standards, and incorporate requirements contained within the 1915(c) Big Sky Waiver application approved by the Centers for Medicare & Medicaid Services.

The department is proposing to update the rule to reference current standards under the Americans with Disabilities Act (ADA). The proposed rule change is necessary to remove references within the rule to outdated standards and ensure environmental accessibility adaptations meet current ADA standards. Additionally, the department is proposing to require that environmental accessibility adaptations

meet the 2010 ADA Standards for Accessible Design. These standards represent the most current and comprehensive guidelines for accessibility adaptations. Adoption of these standards will ensure that accessibility adaptations funded through Big Sky Waiver provide for the highest level of accessibility, promote independence, and enhance the quality of life for individuals who rely on the adaptations. Adoption of these standards will also provide clear guidelines for providers and contractors involved in the modification process, which will help ensure that initial installs are correctly performed and avoid the need for costly retrofits.

The department is also proposing amendments to update requirements relating to installer qualifications and the process for obtaining estimates for environmental accessibility adaptations. The proposal to allow only licensed contractors to install environmental accessibility adaptations is necessary to align with the approved 1915(c) Big Sky Waiver application and help ensure adaptations are properly and safely installed. The proposal for service requests to include an estimate or bid from a licensed contractor aligns with current practice and is necessary to ensure cost-effectiveness of the service.

The proposal for adaptation requests that exceed \$5,000 in cost to include two estimates or bids from licensed contractors is necessary to ensure the environmental accessibility adaptation is the most cost-effective adaptation among those available to meet the member's needs. The proposed requirement also ensures that Big Sky Waiver funds are used in a cost-efficient manner to the maximum benefit of all members of the program. An exemption from receiving two bids or estimates, with prior authorization from the department, is proposed to account for circumstances in which two bids or estimates cannot be obtained due to a lack of available contractors and ensure such lack of availability does not result in a barrier to receiving services.

#### Fiscal Impact

There is no anticipated fiscal impact to the department 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](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., January 17, 2025.

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. Such written request 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](https://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 rule 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/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State December 10, 2024.