

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 HCBS quality) PROPOSED ADOPTION
assurance reviews)

TO: All Concerned Persons

1. On September 16, 2024, at 2:00 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/86356655288?pwd=NOaf3s9VOaetNV74CUHme6KQzL9Obt.1>, meeting ID: 863 5665 5288, and password: 783825; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 863 5665 5288, and password: 783825. Find your local number: <https://mt-gov.zoom.us/u/kdtNkf6bNL>.

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 September 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhus, 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 HOME AND COMMUNITY BASED SERVICES FOR ELDERLY AND DISABLED PERSONS: QUALITY ASSURANCE REVIEWS (1) As used in this rule, the term "provider" means case management teams, independence advisors, and financial managers.

(2) The department will conduct comprehensive provider evaluations at least once every three years, to assure 1915(b) and 1915(c) waivers meet department and federal quality assurance requirements pursuant to 42 CFR 441.302.

(3) The department will conduct quality assurance reviews (QARs) on the provider's premises and/or through desk audits. Upon the department's request, providers must supply the documentation that the department determines is necessary to complete a QAR no later than 30 days following the request for documentation.

(4) The department will determine when reviews will take place. The department will assess compliance with the following service delivery standards:

(a) required documentation;

- (b) service plan completeness;
 - (c) service plan reevaluation requirements;
 - (d) health and safety requirements;
 - (e) principles of charting;
 - (f) waitlist requirements;
 - (g) plan facilitator requirements; and
 - (h) financial accountability.
- (5) The department will assess compliance with the following standards related to provider-prepared areas:
- (a) administration and use of the member survey;
 - (b) case manager qualifications;
 - (c) member involvement;
 - (d) serious occurrence reporting requirements; and
 - (e) quality improvement project reporting.
- (6) The department will review a provider's case samples comprising at least 10 percent of Big Sky Waiver members, along with a 5 percent random sample of members admitted during the specific review period.
- (7) Compliance requires that the provider meet all established standards in 86 percent of the cases reviewed, under both service delivery and provider-prepared standards.
- (a) If compliance is below 86 percent in both areas, or if it is 50 percent or less in one or both areas, the next QAR will be scheduled within one year.
 - (b) If compliance is below 86 percent in one or two areas, but more than 50 percent in both areas, the next QAR will be scheduled within two years.
 - (c) If compliance is 86 percent or greater in both areas, the next QAR will be scheduled in three years.
- (8) Incidents of non-compliance identified through a quality assurance communication (QAC) require a remediation plan or recovery of HCBS funds. Any QACs must be responded to and resolved by a provider within 30 days.

AUTH: 53-2-201, 53-6-113, 53-6-401, MCA
IMP: 53-2-201, 53-6-101, 53-6-401, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt NEW RULE I for quality assurance reviews of Big Sky Waiver providers, which include case management teams, independence advisors, and financial managers. The proposed rule would take a comprehensive approach to improving the quality assurance review process for providers.

The current policy governing the quality assurance review process is set forth in section 608 of the Big Sky Waiver Policy Manual. This policy is outdated due, in part, to changes in the performance measures for the upcoming waiver renewal. Additionally, the policy is not adopted and incorporated by reference in rule.

The department is proposing to replace the policy with NEW RULE I to provide standardized quality assurance review requirements that are intended to increase transparency and accountability, standardize data and monitoring, and create opportunities for providers to promote active beneficiary engagement in their service delivery model. The new rule would provide a consistent approach to collecting data for ensuring compliance with federal regulatory requirements under 42 CFR 441.302 and assurances made by the department in the 1915(b) and 1915(c) Big Sky Waiver. These proposed rule changes would also strengthen oversight of Big Sky Waiver member health and welfare.

Montana is required to submit an evidentiary report to the Centers for Medicare & Medicaid Services on each performance measure approximately 18 months prior to the waiver renewal date that includes remediation measures taken for each systemic and individual instance when a performance measure has less than 100% compliance. Adoption of the proposed rule would help ensure that Montana receives a 100% compliance rating on future evidentiary reports.

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., September 20, 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. 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.

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 adoption 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 August 13, 2024.