

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 37.27.902, 37.88.101, and 37-) PROPOSED AMENDMENT
89.201 I pertaining to chemical)
dependency programs and Medicaid)
mental health services.

TO: All Concerned Persons

1. On August 11, 2023, 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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/86082695581?pwd=WHY3Vyt4NTlqbFVTbXdUdVE4WG9zUT09>, meeting ID: 860 8269 5581, and password: 605444; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 860 8269 5581, and password: 605444. Find your local number: <https://mt-gov.zoom.us/j/86082695581?pwd=WHY3Vyt4NTlqbFVTbXdUdVE4WG9zUT09>.

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 July 28, 2023, 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 provides as follows, new matter underlined, deleted matter interlined:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at:

<https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual>.
<https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~October 1, 2022~~ May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: <https://dphhs.mt.gov/amdd/AMDDNonMedicaidServicesProviderManual>.
<https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual> <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) through (5) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.201 NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ May 12, 2023, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. ~~The department adopts and incorporates by reference the manual as part of this rule.~~ A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at

<https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual><https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-2-201, 53-21-1405, MCA

IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

4. STATEMENT OF REASONABLE NECESSITY

In February 2023, the Secretary of the U.S. Department of Health and Human Services (HHS) approved the final 90-day extension the COVID-19 Public Health Emergency (PHE), which began in January 2020, and announced the PHE would end on May 11, 2023.

To improve safe access to services throughout the PHE, the Department of Public Health and Human Services (department) removed certain face-to-face delivery requirements in addition to exercising discretion with respect to other regulatory requirements. With the end of the PHE on May 11, 2023, the department re-evaluated face-to-face delivery requirements and other requirements that were affected by the PHE. The department is proposing permanent updates to allow telehealth delivery of identified services, discretion related to staffing, and clarification of utilization review requirements for identified services.

In this proposed rule notice, the department proposes to adopt updated versions of the Behavioral Health and Developmental Disabilities (BHDD) Medicaid and non-Medicaid manuals to effectuate these changes.

The proposed updated manuals, with proposed additions underlined and proposed deletion struck through, are posted on the department's web site at <https://dphhs.mt.gov/bhdd/>. The department proposes that the effective date for the updated manuals will be May 12, 2023. Each of the rules proposed to be amended refer to the Medicaid or non-Medicaid manual, and the rules must be amended to reflect the updated version and date of the manual.

The following policies would need to be amended to address changes being made as a result of the PHE:

Policy 105 Severe and Disabling Mental Illness would be amended to include current links.

Policy 215 Utilization Review Determinations and Notifications would be amended to ensure consistent technical denial language between youth and adult services.

Policy 310 Administrative Review, Fair Hearing, and Sanctions would be amended to include current links and reflect the current division name.

Policy 420 Community Based Psychiatric Rehabilitation Services (CBPRS) would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation.

Policy 525 Intensive Outpatient for Substance Use Disorder (SUD IOP) would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation. The department also would amend the provision to correct a typographical error. The policy should read, "(7) If the member is unable to receive the minimum hours per week required in (6)(b)."

Policies 415 and 515, Certified Behavioral Health Peer Support Services (CBHPSS) for Mental Health and Substance Use Disorders would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation.

Policy 445 Behavioral Health Group Home would be amended to clarify utilization management requirements.

Policies 455 and 460, Montana Assertive Community Treatment (MACT) and Program for Assertive Community Treatment (PACT) would be amended to reflect additional discretion regarding staff vacancies, to resolve inconsistencies related to the Serious and Disabling Mental Illness Level of Impairment (LOI) worksheet, and to clarify utilization management requirements.

Fiscal Impact

The state has determined this amendment will have no fiscal impact.

5. The above proposed rules will be retroactively effective May 12, 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 18, 2023.

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 <http://sos.mt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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 11, 2023.