

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 37.106.310, 37.106.503,) PROPOSED AMENDMENT
37.106.506, 37.106.1006 and)
37.106.1012 pertaining to health care)
facilities)

TO: All Concerned Persons

1. On January 11, 2024, at 9:00 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/85836384838?pwd=RHJWRTYbk9wVWRQcW02ejNwaVIJUT09>, meeting ID: 858 3638 4838, and password: 801001; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 858 3638 4838, and password: 801001. Find your local number: <https://mt-gov.zoom.us/j/85836384838?pwd=RHJWRTYbk9wVWRQcW02ejNwaVIJUT09>.

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 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:

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE:
ISSUANCE AND RENEWAL OF A LICENSE (1) through (3)(a) remain the same.

(ii) ~~that has achieved accreditation by a recognized accrediting organization~~been granted accreditation by an accreditation entity approved by the U.S. Centers for Medicare & Medicaid Services; or

(iii) remains the same.

(b) the facility must submit or make available to the Department the full accreditation entity or department inspection report

(b) remains the same but renumbered (c).

(i) remains the same.

(c) remains the same but renumbered (d).

(i) through (4) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-202, 50-5-203, 50-5-204, MCA

37.106.503 DEFINITIONS (1) ~~"Accreditation Association for Ambulatory Health Care (AAAHC)" means the organization nationally recognized by that name and surveys outpatient centers for surgical services upon their request and grants accreditation status to the outpatient center for surgical services that it finds meets its standards and requirements.~~

(2) through (4) remain the same but renumbered (1) through (3).

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.506 MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES (1) An outpatient center must:

(a) through (e) remain the same.

(2) An outpatient center may:

(a) show written evidence of current accreditation by ~~the Accreditation Association for Ambulatory Health Care (AAAHC)~~ an accreditation entity approved by the U.S. Centers for Medicare & Medicaid Services including recommendations for future compliance as a condition of licensure; or

(b) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.1006 DEFINITIONS (1) ~~"Commission for the Accreditation of Birth Centers" means the organization nationally recognized by that name and that surveys outpatient birth center facilities upon their request and grants accreditation status to the outpatient birth center that it finds meets its standards and requirements.~~

(2) through (5) remain the same but renumbered (1) through (4).

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207, MCA

37.106.1012 MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR PRIMARY CARE: BIRTH CENTERS (1) If an outpatient center for primary care operates a birth center, the birth center shall:

(a) remains the same.

(b) show written evidence of current accreditation by ~~the Commission for the Accreditation of Birth Centers~~ an accreditation entity approved by the U.S. Centers for Medicare & Medicaid services including recommendations for future compliance or meet the standards as outlined in ARM 37.106.1014; and

(c) through (d) remain the same.

AUTH: 50-5-103, 53-6-106, MCA
IMP: 50-5-103, 50-5-106, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARMs 37.106.310, 37.106.503, 37.106.506, 37.106.1006, and 37.106.1012. The 2023 legislature enacted House Bill No. 102, an act revising laws related to accrediting agencies for health care facilities. The bill was signed by the Governor on April 18, 2023. The department proposes to amend Administrative Rules of Montana 37.106.310, 37.106.503, 37.106.506, 37.106.1006, and 37.106.1012, to implement HB 102. Amendment of these rules is necessary to allow all health care facilities to be eligible to seek accreditation from any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services and submit the accreditation survey and certification received by the health care facility from such accrediting entity for eligibility for licensure.

ARM 37.106.310

The department proposes amendment to this rule, which provides circumstances in which a 3-year license may be granted to a health care facility, so that the terminology surrounding a facility's ability to submit an accreditation report to the department for licensing aligns with the same terminology in 50-5-103, MCA, as amended by HB 102. As noted above, this proposed change is necessary to implement HB 102. The rule is further amended to require that the accreditation report and certificate must be received by the department for review for eligibility for licensure.

ARM 37.106.503

The department proposes amendment to this rule, which provides definitions used in Outpatient Centers for Surgical Services, to remove the definition of "Accreditation Association for Ambulatory Health Care (AAHHC)," and to renumber subsequent rules. The changes to 50-5-103, MCA allow Outpatient Centers for Surgical Services to choose any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services from which to receive accreditation, and not the specific accrediting agency mentioned in this rule. Therefore, no definition of this accreditation agency is needed. This proposed change would further implements HB 102.

ARM 37.106.506

The department proposes amendment to this rule, which provides minimum standards for outpatient centers for surgical services, to change the requirement from the facility showing evidence of accreditation by the Accreditation Association for Ambulatory Health Care, to the facility showing evidence of accreditation by an accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services. As noted above, this proposed change is necessary to implement HB 102.

ARM 37.106.1006

MAR Notice No. 37-1048

The department proposes amendment to this rule, which provides definitions used in Outpatient Centers, to remove the definition of “Commission for the Accreditation of Birth Centers,” and to renumber subsequent rules. The changes to 50-5-103, MCA allow Outpatient Centers to choose any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services from which to receive accreditation, and not the specific accrediting agency mentioned in this rule. Therefore, no definition of this accreditation agency is needed. This proposed change would further implement HB 102.

ARM 37.106.1012

The department proposes amendment to this rule, which provides minimum standards for outpatient centers for primary care – birth centers, to change the requirement from the facility showing evidence of accreditation by the Commission for the Accreditation of Birth Centers, to the facility showing evidence of accreditation by an accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services. As noted above, this proposed change is necessary to implement HB 102.

Fiscal Impact

This proposed rule amendments have no fiscal impact.

5. The department intends these amendments to be applied retroactively to October 1, 2023, the effective date of HB 102.

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., January 19, 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 <http://sos.mt.gov/ARM/register>.

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 September 5, 2023.

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.

/s/ Flint Murfitt

Flint Murfitt
Rule Reviewer

/s/ Charles T. Brereton

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

Certified to the Secretary of State December 12, 2023.