

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 37.34.3005 pertaining to) PROPOSED AMENDMENT
Developmental Disabilities Program)
Reimbursement for Services)

TO: All Concerned Persons

1. On August 10, 2023, 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81808831991?pwd=YnFBaXdCcTdKcFB5dzZUQWl6VHZGZz09>, meeting ID: 818 0883 1991, and password: 498398; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 818 0883 1991, and password: 498398. Find your local number: <https://mt-gov.zoom.us/u/kratOdwag>.

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 27, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS

(1) Reimbursement through the Developmental Disabilities Program's (DDP) Medicaid Home and Community-Based Services Waiver Programs is only available to a provider for services or items:

(a) remains the same.

(b) delivered in accordance with the terms and conditions of the formal approval by the Centers for Medicare & ~~and~~ Medicaid (CMS) governing each waiver program; and

(c) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana

Developmental Disabilities Program Services Manual, effective July 1, 2022 July 1, 2023. A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf> <https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf>.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to the reimbursement rates in the Montana Disabilities Program Services Manual and updating the effective date to July 1, 2023. The proposed amendments also include changes to the manual to ensure it conforms to the Developmental Disabilities 0208 Comprehensive Waiver, which the Centers for Medicare & Medicaid Services (CMS) recently approved as part of the waiver's routine five-year renewal process.

In 2021, the Montana legislature directed the department to contract with an independent health care consulting firm to conduct a comprehensive rate review of services provided through the Adult Behavioral Health, Children's Mental Health, Developmental Disabilities, and Senior and Long-Term Care programs. The department contracted with Guidehouse, a consulting firm, to conduct a multifaceted study of Medicaid rates within the four programs and make recommendations for rate increases. Through this rule notice, the department proposes to apply funding appropriated by the 2023 legislature across all studied rates in the Developmental Disabilities Home and Community-Based Services Waiver Programs using the methodology recommended by Guidehouse. To reduce existing disparities in rates, this methodology increases rates by a percentage of the difference between current and benchmark rates. Based on the allocated funding, the department is able to fund about 70% of the "gap" between the current rate and the benchmark rate and brings these rates up to an average of 94% of the Guidehouse benchmark effective July 1, 2023. Overall, this methodology results in an increase in funding for all studied rates across the department of approximately 18%, effective July 1, 2023. The specific rate increase for each service is dependent upon the difference between the current rate and the Guidehouse benchmark rate. The following fee schedules have proposed rates that were recommended by the Guidehouse study: Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver. The proposed rates for can be found on pages 63-65 of the draft Developmental Disabilities Program Services Manual.

The proposed amendments will make the following changes in the Montana Developmental Disabilities Program Services Manual to reflect changes in the

Developmental Disabilities 0208 Comprehensive Waiver: adjust reimbursement rates, add telehealth language to services eligible for telehealth, add legally responsible individuals as allowable paid caregivers, and implement needed changes in the texts of the manual that is incorporated by reference in this rule.

In addition to updating rates as described above, the proposed amendment will incorporate the changes listed below with an effective date of July 1, 2023:

- Update the following service definitions in the manual to be consistent with language in the CMS-approved 0208 Waiver: Adult Foster Support; Assisted Living; Behavioral Support Services (BSS); Individual Goods and Services; Psychological Evaluation, Counseling, and Consultation; Personal Emergency Response System; Remote monitoring; Day Supports and Activities; Respite; Community Transition Services; Companion; Retirement; Physical Therapy; Speech Therapy; and Homemaker.
- Add transportation language to the following services to include transportation in the legislatively approved rates: Congregate Living, Medical GH; Day Activities; Retirement; Assisted Living; Supported Living; Residential Training Supports; and Adult Foster.
- Add additional tiers for BSS service to be consistent with tiers in the CMS-approved 0208 Waiver.
- Add prorating language which is currently contained in provider contract agreements. This proposed change is necessary because provider contract agreements are being replaced with a provider enrollment system.
- Add retainer payments to the following services to be consistent with language for billing modifiers in the CMS-approved 0208 Waiver: Assisted Living; and Retirement.
- Add telehealth language to services eligible for telehealth services. The department has determined the following services can be effectively provided through telehealth: Behavioral Supports Service; Caregiver Training and Support; Nutritionist; Occupational Therapy; Physical Therapy; Private Duty Nursing; Psychological Evaluation, Counseling, and Consultation; Remote monitoring; Residential Habilitation; Speech Therapy; Supported Employment Individual Employment Support; Supported Employment Follow Along Support; and Supports Brokerage.
- Add legally responsible individuals as allowable paid caregivers for the following services: Individual Goods and Services; Specialized Medical Equipment; Transportation; Residential Habilitation; Companion Services; Personal Care; Personal Supports; Supported Employment Follow Along; Supported Employment Co-Worker Support; Supported Employment Individual Employment Support; and Supported Employment Small Group Employment Support.

- Update URL link to the Montana Developmental Disabilities Program Manual.

The proposed Montana Developmental Disabilities Program Services Manual dated July 1, 2023, can be found at <https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf>.

Fiscal Impact

The provider rate increases for DD Waiver services are projected to have the following fiscal impact in State Fiscal Year 2024:

\$7,920,990 General Fund increase
\$14,057,456 Federal Fund increase
\$21,978,446 Total Funds increase

5. The department intends to apply these proposed rule amendments retroactively to July 1, 2023. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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://sosmt.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 rule will significantly and directly impact small businesses. The group of small businesses probably affected

by the proposed rule amendment are providers of DDP waiver services. The probable significant and direct effects of the proposed amendment on small businesses will be to increase reimbursement rates.

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.