

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 37.87.703, 37.87.903,) PROPOSED AMENDMENT
37.87.1011, 37.87.1410, and)
37.106.1916 pertaining to children's)
mental health services)

TO: All Concerned Persons

1. On November 27, 2023, at 3:00 p.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/84580174055?pwd=SDFNU3pYU0dHdVE5WkFMcTRZenZoUT09>, meeting ID: 845 8017 4055, and password: 937371; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 845 8017 4055, and password: 937371. Find your local number: <https://mt-gov.zoom.us/u/kPof4cbSK>.

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 November 8, 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 provide as follows, new matter underlined, deleted matter interlined:

37.87.703 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), COVERED SERVICES (1) Mental health center services for youth with SED include:

(a) through (d) remain the same.

(e) Outpatient therapy services provided according to an individualized treatment plans and such services must includes include:

(i) through (iii) remain the same.

(f) Targeted case management (TCM) services as defined in ~~ARM 37.87.802~~ the manual adopted and incorporated by reference in ARM 37.87.903.

(g) remains the same.

(i) To the extent otherwise permitted by applicable Medicaid rules, such mental health professional services may be billed either by the mental health center

either as mental health center services or by the mental health professional under the applicable Medicaid category of service, but may not be billed as both mental health center services and mental health professional services.

(ii) remains the same.

(h) Home support services (HSS) and therapeutic foster care (TFC) as defined in ~~ARM 37.87.1402(5)~~ the manual adopted and incorporated by reference in ARM 37.87.903.

(i) Mental health intensive outpatient therapy (IOP) as defined in the manual adopted and incorporated by reference in ARM 37.87.903.

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

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

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) through (4) remain the same.

(5) ~~Computing the time for any request provided for in this subchapter includes weekends and holidays~~ In computing any time period specified in this subchapter, every day is counted, including Saturdays, Sundays, and legal holidays. If a deadline the last day falls on a weekend or holiday, the deadline is the next business day.

(6) remains the same.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Medicaid Services Provider Manual (manual), dated ~~October 1, 2024~~ May 12, 2023, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Medicaid Services Provider Manual, dated ~~October 1, 2024~~ May 12, 2023. 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, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210~~ or at <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx> <https://dphhs.mt.gov/bhdd/cmb/Manuals>.

(8) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or were otherwise not in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(9) remains the same.

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

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

37.87.1011 THERAPEUTIC GROUP HOME (TGH), PROVIDER REQUIREMENTS (1) remains the same.

(2) Therapeutic group home (TGH) services may be provided ~~only~~ by a an in-state facility which is licensed as a TGH by the department in accordance with the

provisions of Title 52, chapter 2, part 6, MCA, and found in ARM 37.87.1011, 37.87.1017, and the manual adopted and incorporated by reference in ARM 37.87.903, or by an out-of-state facility similarly licensed in the state in which it operates.

(3) and (4) remain the same.

~~(5) As a condition of enrollment in the Montana Medicaid program, TGH providers must pay direct care workers (DCW) a minimum of \$8.50 per hour.~~

~~(a) "Direct care workers (DCW)" means an employee of a Medicaid-enrolled provider, who is assigned to work directly with youth or in youth-specific activities for no less than 75% of their hours of employment. A DCW is primarily responsible for the implementation of the treatment goals of the youth. DCW does not include professional staff.~~

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

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

37.87.1410 THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS (1) through (3) remain the same.

(4) The clinical lead must:

(a) provide direction and consultation to the FSS to address the clinical needs of the youth and the needs of the caregiver as identified in the youth's individualized treatment plan (ITP);

(b) respond to the youth's and the caregiver's needs when the FSS is not available;

(c) through (5) remain the same.

(6) The following requirements must be met by either the clinical lead, the FSS, or both:

(a) provide contacts at the frequency, location, and duration that are sufficient to meet the identified needs of the youth and the caregiver, with the duration of the contacts ~~are~~ not limited;

(b) conduct a minimum of four scheduled contacts or sessions with the caregiver in each four-week period, two of which must be face-to-face within the home and community environment, excluding the provider's office or facility, based on the needs of the caregiver that are ~~and~~ documented in the ITP;

(c) conduct a minimum of two scheduled ~~face-to-face~~ treatment sessions with the youth, one of which must be face to face, within the home and community environment, excluding the provider's office or facility, ~~with the youth~~ in each four-week period, based on the needs of the youth that are ~~and~~ documented in the ITP; ~~and~~

(i) For both requirements in (b) and (c), face-to-face delivery of the treatment services is preferred. Telehealth may be substituted if clinically indicated or if the youth does not have access to face-to-face services. Case notes must include the reason(s) for telehealth delivery of service, including documentation of attempts to identify local supports, if the need for telehealth delivery of services is related to access issues; and

(d) and (7) remain the same.

(8) The provider of TFC must use a research-based practice curriculum ~~specific~~ to provide family-based services. Staff training in the research-based practice must be documented in the provider's personnel records.

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

37.106.1916 MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS

(1) Based upon the findings of the assessment(s) conducted in accordance with ARM 37.106.1915, each mental health center must establish an individualized treatment plan for each client within 24 hours after admission for crisis stabilization program services and within five contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must:

(a) and (b) remain the same.

(c) for each objective, describe the service(s) or intervention(s) with sufficient specificity to demonstrate the relationship between the service(s) or intervention(s) and the stated objective;

(d) remains the same.

(e) include the signature of the client's or parent/legal representative/guardian's ~~signature~~ and date indicating participation in the development of the treatment plan. If participation of the client's or parent/legal representative/guardian's ~~participation~~ is not possible or inappropriate, written documentation must indicate the reason such participation is not possible;

(f) include the signature and date of the mental health center's licensed mental health professional and of the person(s) with primary responsibility for implementation of the plan, indicating development and ongoing review of the plan. If intensive care management is the only service being received by the client from the mental health center, a program supervisor must sign the treatment plan indicating the supervisor's review and approval for appropriateness; and

(g) through (4) remain the same.

(5) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted ~~face-to-face~~ and include:

(a) through (7) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.703, 37.87.903, 37.87.1011, 37.87.1410, and 37.106.1916. The following summaries explain programmatic changes and the reasonable necessity for the proposed rule amendments.

Mental Health Intensive Outpatient Therapy (IOP) for Youth With Serious Emotional Disturbance (SED)

The department's Children's Mental Health Bureau (CMHB) offered several provider flexibilities during the public health emergency (PHE). Mental Health Intensive Outpatient Therapy was approved as a temporary service during the PHE, and CMHB now proposes to make the service a permanent benefit. This change will increase access to mental health services for Montana youth. Adding this benefit requires updates to ARM 37.87.703 and the Children's Mental Health Medicaid Services Provider Manual (manual).

Face-to-Face Requirements for Youth With SED Community-Based Services

CMHB waived face-to-face requirements for many community-based services during the PHE, which allowed providers flexibility to serve clients and increased access to care. To continue to allow increased access to youth mental health services, CMHB proposes updates to the manual, ARM 37.87.1410, and 37.106.1916 for the following services to continue to permit the provision of certain services by means of telehealth:

- Home Support Services (HSS);
- Therapeutic Foster Care (TFC) and Therapeutic Foster Care Permanency (TFOC-P);
- Comprehensive School and Community Services (CSCT);
- Community Based Psychiatric Rehabilitation and Support Services (CBPRS); and
- Individualized Treatment Plan meetings for all Mental Health Center (MHC) services.

Prior Authorization Requirements for Partial Hospitalization Services (PHP) and Extraordinary Needs Aide (ENA)

The prior authorization requirements for PHP and ENA were suspended during the PHE, and CMHB now proposes to remove prior authorization requirements for these services permanently. This change will support access to care for Montana youth and requires updates to the manual.

Continued Stay Review (CSR) Requirements for Therapeutic Group Home (TGH) Providers

CMHB is proposing updating the manual to allow TGH providers to submit continued stay reviews for medical necessity up to 30 days prior to the last covered day of the current authorization period. This update will support the transition of youth when a stay is no longer medically necessary.

Out-of-State Therapeutic Group Home (TGH) Providers

The current language in ARM 37.87.1011(2) specifies a Montana license is required to provide therapeutic group home services. The department proposes to update this rule to include the same licensure requirements for out-of-state therapeutic group homes to align with current practice.

Rule Clean Up

The department proposes to update language in the manual to accurately reflect current practices. The department is also updating current language in ARM

37.87.1011(5) to align with current practice. The department does not monitor direct care staff wages as a condition of Medicaid enrollment and, therefore, is removing the reference to an outdated minimum pay requirement for direct care workers.

Fiscal Impact

The following fiscal impact is associated with the addition of Mental Health Intensive Outpatient Therapy for Youth with Serious Emotional Disturbance as a permanent benefit. There is no other fiscal impact associated with these proposed changes.

Service	Federal Fiscal Year (FFY)	Total Funds	Federal Funds	State Funds
Mental Health Intensive Outpatient Therapy	FFY 23 (3 mos)	\$50,886	\$32,628	\$18,258
	FFY 24 (12 mos)	\$215,442	\$138,141	\$77,300

5. The department proposes to make the above-stated rules retroactively effective to 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., December 1, 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 paragraph 6.

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 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 October 24, 2023.