

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 37.80.101, 37.80.102,) REPEAL
37.80.201, 37.80.202, 37.80.205,)
37.80.316, 37.80.317, and 37.80.501,)
and the repeal of 37.80.206)
pertaining to child care)

TO: All Concerned Persons

1. On January 17, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-904 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 32 of the 2020 Montana Administrative Register, Issue Number 1.

2. The department has amended and repealed the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter asked how a payment will work when a child attends 85% or more of the authorized amount and a parent is able to determine the child's need for child care as stated in Policy Section 6-3.

RESPONSE #1: The department believes it is in the child's best interest to have the parent determine the child's need for child care. Policy Section 6-3 includes a weekly and daily limit for authorized child care.

COMMENT #2: One commenter asked if a child care provider will have to enter the time in and out for a child to receive the adjusted rate for non-traditional care described in ARM 37.80.205.

RESPONSE #2: The department will require child care providers to invoice for a child's actual time in and time out as outlined in Policy Section 6-7.

COMMENT #3: A commenter asked whether there would be a new statewide provider reimbursement rate for non-traditional care.

RESPONSE #3: The department will not have a different statewide provider reimbursement rate for non-traditional care. Instead, an adjusted rate will be added to child care hours during non-traditional time as defined in ARM 37.80.102.

COMMENT #4: A commenter asked what the definition for excessive unexplained absences were.

RESPONSE #4: The department defines unexplained absences in Policy Section 6-7, page 3 of 4. An unexplained absence occurs when a child care provider has a child absent for five or more consecutive days, and the provider does not know why the child is absent.

COMMENT #5: A commenter asked whether a case can be terminated (closed) when there is a loss of contact with the family. The commenter gave several examples of mail being returned and an obsolete phone number or email address.

RESPONSE #5: The department outlines in Policy Section 6-5 required changes that must be reported to a CCR&R agency. A family is required to report a change in mailing address, residential address, or phone number within ten calendar days. Policy Section 6-5 states changes not reported in a timely manner will be evaluated, but failure to report does not necessarily cause a loss of eligibility. A family's failure to report would be evaluated on a case-by-case basis.

A change in email address can be reported by a parent, but it is not required. A change in email address has no effect on the family's eligibility.

COMMENT #6: A commenter asked if the payment for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time listed on the authorization plan applies to only full time care and the provider types: Family, Friend, and Neighbor (FFN) and Relative Care Exempt (RCE) provider.

RESPONSE #6: The department intends that the entire monthly amount payment applies to any number of authorized hours on an authorization plan. The rule change is about the child's attendance being at least 85% of the authorized time to receive the entire monthly amount as a payment. The payment rule change will apply to all child care provider types.

COMMENT #7: A commenter asked what would occur for a school-age child on a day when school is out if the payment is made for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time listed on the authorization plan.

RESPONSE #7: The department is required to pay a day for a school-age child on a day when school is out because a day when school is out is considered a temporary change. A temporary change is covered in ARM 37.80.202(13).

COMMENT #8: A commenter asked if payments will be allowed to exceed the authorization plan to accommodate a school-age child when school is out.

RESPONSE #8: The department has removed a CCR&R agency's ability to override an invoice when the family exceeds the amount of care authorized in Policy Section 6-3. As outlined in Response #7, if a school-age child has a day when school is out that is a school holiday or spring break, it is considered a temporary break and child care is paid.

COMMENT #9: A commenter stated there may be a negative impact with Absent Days being removed for a child's occasional absence.

RESPONSE #9: The department believes that payment for the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time will allow a child to be absent for a few days each month.

COMMENT #10: A commenter stated there may be a negative impact on parents that share custody of children receiving the Best Beginnings Child Care Scholarship when a child attends at least 85% of the authorized time.

RESPONSE #10: The department believes that the impact of Best Beginnings Child Care Scholarship for a child of shared custody will remain the same. Currently, only actual attendance within the authorization plan is paid for a child. In the case when a child has shared custody, one or both parents could be eligible under the Best Beginnings Child Care Scholarship. The child will be authorized for care based on the child's needs.

COMMENT #11: A commenter asked if Family, Friend, and Neighbor (FFN) and Relative Care Exempt (RCE) providers would be able to receive adjusted rates for providing non-traditional care.

RESPONSE #11: The department intends this payment rule change to apply to all child care providers. If a child care provider provides at least one hour of care with non-traditional hours, then the provider will be paid an adjusted amount.

COMMENT #12: A commenter asked if a parent can include parental sleep time when determining a child's need for authorized hours of child care.

RESPONSE #12: The department states in Policy Section 6-3 that a parent can choose to have child care during work hours or rest time, which could include parental sleep time. The parent cannot choose to have child care during both work and rest time.

COMMENT #13: A commenter asked if a parent will be able to request more than 50 hours per week of authorized child care.

RESPONSE #13: The department may approve authorized child care for more than 20 hours per day and 50 hours per week. A request will be evaluated on a case-by-case basis.

COMMENT #14: A commenter asked what would occur if a family has an unpaid copayment at annual redetermination or with a new application.

RESPONSE #14: The family would be ineligible for the Best Beginnings Child Care Scholarship until a receipt of payment for the unpaid copayment is received. A case will not close during a 12-month eligibility period if there is an unpaid copayment.

COMMENT #15: A commenter stated there may be a negative impact for child care providers if there is no penalty for an unpaid copayment.

RESPONSE #15: Federal regulations prohibit the termination of a family's eligibility during a 12-month eligibility period for an unpaid copayment. The department believes verifying a family has no unpaid copayments at initial application and annual redetermination is the best option to enforce it as an eligibility requirement.

COMMENT #16: A commenter supported the proposed rule changes because it would allow families flexibility and to pick up a child earlier in the day without an added expense.

RESPONSE #16: The department agrees with the comment.

4. These rule amendments and repeal are effective June 1, 2020.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 7, 2020.