

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 37.80.101, 37.80.102,) PROPOSED AMENDMENT AND
37.80.201, 37.80.202, 37.80.205,) REPEAL
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 February 6, 2020 at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 January 30, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain the same.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual, dated ~~July 1, 2018~~ June 1, 2020, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

~~(1) "Absent days" means a payment to assist households when a child care provider requires payment for a child's absence.~~

(2) through (32) remain the same but are renumbered (1) through (31).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (6) remain the same.

~~(7) Payment may only be made for care listed on the authorization plan.~~

(8) through (12) remain the same but are renumbered (7) through (11).

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) through (9) remain the same.

(10) Persons providing child care services subsidized under this chapter are paid at the lesser of the provider's usual and customary rate or the rates specified in ARM 37.80.205. ~~This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter.~~ The portion of the total monthly payment that the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

(11) through (13) remain the same.

~~(14) Benefits are only paid for actual care provided during the authorization and corresponding certification period, except as provided in ARM 37.80.205 and 37.80.206.~~

(15) remains the same but is renumbered (14).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS (1) The department calculates provider rates based on market rate surveys required by the Child Care and Development Block Grant Act of 2014. A half-time day rate is calculated for ~~six~~ five or less hours of care during a calendar day. A full-time day rate is calculated for more than ~~six~~ five hours and up to 12 hours during a calendar day.

(2) and (3) remain the same.

(4) Providers are paid for ~~child care provided~~ actual attendance when the child is present if a child attends less than 85% of the authorized time listed on the authorization plan. ~~Payment for child care when the child is absent is only allowed as described in ARM 37.80.206.~~

(5) Providers are paid 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.

(5) through (7) remain the same but are renumbered (6) through (8).

(9) The department has the discretion to adjust rates for child care provided during non-traditional hours as defined in ARM 37.80.102.

(a) In order for an adjusted rate to be paid, the approved care must be provided for at least one hour between 6 p.m. to 6 a.m. Monday through Friday or after 6 p.m. Friday to 6 a.m. Monday.

(8) and (9) remain the same but are renumbered (10) and (11).

(12) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days unless the child has been attached to a different provider. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) through (4) remain the same.

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 calendar days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) remains the same.

(b) ~~The claim must indicate the child's actual attendance accurately, within one half hour. The provider's claim may be rounded to the nearest half hour of total daily attendance.~~ The claim must accurately reflect the child's time in and time out as indicated on the provider's sign-in/sign-out records.

(c) through (7) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-711, 52-2-713, MCA

37.80.317 AUTHORIZATION OF SERVICES – AUTHORIZATION PLANS

(1) Child care assistance is provided for through an authorization of services and an authorization plan. The authorization of services and authorization plan include the following information:

(a) through (c) remain the same.

(d) name of the child care provider; and

(e) amount of child care payment based on the number of hours per week authorized; and

(e) remains the same but is renumbered (f).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) Child care assistance will be terminated if any of the following occurs:

(a) remains the same.

(b) a parent has been given a grace period and does not meet the activity requirement or is not participating in the TANF funded case assistance program at the end of the grace period;

~~(c) the parent no longer needs child care to allow the parent to participate in an activity specified in ARM 37.80.201;~~

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

(d) a family moves outside of the state of Montana; or

~~(e) a parent who was participating in the TANF funded cash assistance program is no longer a participant in that program and is not otherwise eligible for child care assistance under the provisions of ARM 37.80.201;~~

~~(f) the child no longer meets the age requirements of ARM 37.80.102.~~

(g) remains the same but is renumbered (e).

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), ~~(e)~~ (d), or ~~(f)~~ (e), notice of termination must be sent to both the parent and the provider at least 15 calendar days prior to the effective date of termination, except for ~~(1)(e)~~ TANF cases in which a ten-calendar-day notice is required. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), ~~(d)~~, or ~~(g)~~.

(a) through (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

4. The department proposes to repeal the following rule:

37.80.206 ABSENT DAYS is found on page 37-17807 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Best Beginnings Child Care Scholarship (BBCCS) Program which is funded by federal funds through the Child Care Development Fund (CCDF) with some matching state general fund monies. The BBCCS Program offers child care assistance for low income families with parents working and/or attending school, families referred by Temporary Assistance for Needy Families (TANF), and children referred by Child Protective Services (CPS). The BBCCS Program has eligibility determined through Child Care Resource and Referral (CCR&R) agencies.

The proposed administrative rule changes are necessary to revise the department's policy manual for the program and to conform the department's rules for the administration of the BBCCS Program to federal regulations at 45 CFR Part 98.

ARM 37.80.101

This proposed rule amendment would adopt and incorporate by reference proposed revisions to the Early Childhood Services Bureau (ECBS) Child Care Policy Manual (manual) effective February 1, 2020. The proposed rule amendment is necessary to incorporate the manual revisions described below.

Policy Section 1-1: Table of Contents

The department proposes changes to revise the subheading to proposed changes to policy sections 6-3 and 6-6.

Policy Section 1-10: Timely Notices and Termination

The department proposes to remove the term "certification plan" because it is no longer an accurate term. A family on the Best Beginnings Child Care Scholarship is given a 12-month eligibility period. The department proposes to remove examples of when a 15-day notice and no advance notice would be given. These are redundant and do not reflect all possible examples.

Policy Section 3-1: OPA, Pathways, CCR&R Coordination

The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 3-2: Tribal TANF Coordination

The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 3-3: Working Caretaker Relative Child Care

The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 6-3: Issuing the Authorization of Services and Certification Plan

The department proposes to rename the Policy Section to "Issuing the Authorization of Services and Authorization Plan." The term "certification plan" is no longer used. The department proposes to allow the parent to determine the child care needs for their child after the family is determined eligible for the Best Beginnings Child Care Scholarship. This promotes continuity of care for a child because the parent knows the child's needs. The department proposes to put a limit on the weekly maximum number of hours a child can be authorized for payment by the Best Beginnings Child Care Scholarship to avoid abuse of this policy.

Policy Section 6-4: Copayment Requirements

The department proposes to remove language about a family's case closing due to an unpaid copayment. A family has a monthly copayment as an eligibility requirement, and this will be reviewed at an initial application or at annual re-determination. The case will not close during a 12-month eligibility period. Current policy is contrary to federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 6-6: Absent Days and Continuity of Care

The department proposes to rename the Policy Section to "Continuity of Care." The department proposes to remove all language about Absent Days to align with payment practices in ARM 37.80.205. The department proposes in ARM 37.80.205 to pay the monthly authorized amount when a child attends a child care provider for 85% of the authorized time. Absent Days were used as payment practice to pay child care providers for occasional absences. The department proposes changes to ARM 37.80.205 that will pay for occasional absences because only 85% attendance for a month is required.

Policy Section 6-7: Invoice and Payment Processes

The department proposes to revise language about how invoices are used in the payment process. The department proposes to require a child's actual time in and time out of a child care facility. A child care provider providing care for a child receiving the Best Beginnings Child Care Scholarship is required to keep sign-in/sign-out records where a parent signs actual time in and time out of a child. The department will be able to increase program integrity by aligning how sign-in/sign-out records are maintained and what information is found on invoices. The department proposes to remove the term "Absent Days" following proposed changes to Policy Section 6-6.

ARM 37.80.102

The department proposes to remove the definition for "Absent Days" following proposed changes to ARM 37.80.205. The department proposes payment practices changes that will include payment for occasional absences.

ARM 37.80.201

The department proposes to remove language about payments based on an authorization plan. The department proposes changes to ARM 37.80.205 to include payment practices.

ARM 37.80.202

The department proposes to remove redundant language. The department proposes to move language to ARM 37.80.205 because payment practices are included in this rule.

ARM 37.80.205

The department proposes to revise language to clarify payment practices on how child care providers are paid for child care services under the Best Beginnings Child Care Scholarship program. The department proposes to revise the definition for payment of a half-time day from six hours to five hours. The department has received feedback from child care providers that a half-time day is defined by most as less than five hours per day. The department proposes to align with the business practices of child care providers.

ARM 37.80.206

The department proposes to repeal this rule to align with ARM 37.80.205 proposed changes.

ARM 37.80.316

The department proposes to change how a child care provider indicates the time a child attends the facility. By receiving actual time a child enters and leaves a child care facility, the department will improve program integrity. Actual time on the invoice can be compared to the times signed off by the parent on sign-in/sign-out records kept by the child care provider.

ARM 37.80.317

The department proposes to add the amount of a child care payment to an authorization plan. By providing this information, a child care provider will be able to determine what a monthly payment would be for a child if he or she attended 85% of the authorized time during a month.

ARM 37.80.501

The department proposes to revise the reasons a case can be terminated to align with federal regulations, 45 CFR Part 98, 98.21(a)(5). Federal regulations allow a case to be closed in the following circumstances: excessive unexplained absences, a change in residency outside of the state, and if a parent has not met an activity requirement after being given a grace period. The department allows a parent to choose to close a case with a written request.

Fiscal Impact

The Best Beginnings Child Care Scholarship (BBCCS) Program is administered by the department using funds through the federal Child Care Development Fund

(CCDF), matching state general fund, and required state Maintenance of Effort (MOE). The department expects the proposed rules will have a fiscal impact to the state.

The BBCCS Program offers child care assistance for families with parents attending school and/or working under the Non-TANF Program, families referred by Temporary Assistance for Needy Families (TANF), and children from Child Protective Services (CPS). In State Fiscal Year (SFY) 2019, 4,956 children from Non-TANF families, 1,737 children referred by TANF, 193 children referred by the Working Caretaker Relative Program, 45 children referred by Tribal IV-E, and 1,881 children referred by CPS were receiving child care assistance. There was a total of 8,043 unduplicated children.

The Child Care Development Fund requires that not less than 70% must be used to fund direct services, child care assistance payments to providers for eligible children. The BBCCS did not meet the direct fund requirement in Federal Fiscal Year (FFY) 2017. In order to exceed this fiscal requirement, the department proposes to pay a child care provider the total monthly authorized amount when a child attends 85% of the authorized time.

Absent Days have an average annual expenditure of \$940,000. The department proposes to eliminate Absent Days, and the resulting savings of approximately \$1,000,000 will be applied to meeting full payments for children that attend 85% of the authorized time.

The department proposes to pay an additional percentage for child care provided during hours that fall outside of traditional child care hours of 6:00 a.m. to 6:00 p.m., Monday through Friday. It is estimated the proposed rulemaking will cost the department \$112,000.

As of August 2019, there were 259 licensed child care centers, 199 licensed family providers, 366 licensed group providers, 55 Family, Friend, and Neighbor (FFN) providers, and 116 Relative Care Exempt (RCE) providers. Child care providers may be small businesses. The department expects child care providers who have children receiving child care assistance and attending full-time will see a benefit because the provider will receive the entire month's authorized payment. The impact on an individual small business will be based on the number of children with child care assistance served by the child care provider, the number of child care hours each child with child care assistance is authorized for, and the number of hours each child attends at the child care provider's facility per month.

The department intends to apply these amendments June 1, 2020.

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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

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 or may be made by completing a request form at any rules hearing held by the department.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will significantly and directly impact small businesses.

/s/ Robert Lishman for Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State January 7, 2020.