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

In the matter of the amendment of ARM 37.85.106, 37.87.702, 37.87.703, 37.87.802, 37.87.805, 37.87.807, 37.87.809, 37.87.823, 37.87.903, 37.87.1011, 37.87.1202, 37.87.1217, 37.87.1223, 37.87.1226, 37.87.1351, 37.87.1402, 37.87.1405, 37.106.1902, 37.106.1906, and 37.106.1935 and the repeal of ARM 37.87.1313, 37.87.1314, and 37.87.1315 pertaining to updates for targeted case management, outpatient therapy, and reference revisions	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 28, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-911 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 372 of the 2020 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 37.85.106, 37.87.702, 37.87.703, 37.87.802, 37.87.805, 37.87.807, 37.87.809, 37.87.903, 37.87.1011, 37.87.1202, 37.87.1217, 37.87.1223, 37.87.1226, 37.87.1351, 37.87.1402, 37.87.1405, 37.106.1902, 37.106.1906, and 37.106.1935.

3. The department has repealed the following rules as proposed: ARM 37.87.1313, 37.87.1314, and 37.87.1315.

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.87.823 TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS

(1) through (5) remain as proposed.

(6) Upon admission to TCM services and prior to all treatment team meetings of TCM services, the targeted case manager shall meet face-to-face with the youth's family or caregivers to complete a family treatment team meeting preparation checklist and questionnaire. If the meeting cannot be accomplished face-to-face, the targeted case manager shall document in the youth's file the reason for conducting the meeting through phone contact or telehealth. The checklist and

questionnaire must contain and document the following components:

(a) through (7) remain as proposed.

(8) In addition to the requirements outlined in (7), individual treatment plans must include:

(a) identification of natural supports or treatment goals intended to develop natural supports; and

(b) through (11) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

5. 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: Several commenters offered support for the proposed updated rules and thanked the department for addressing the issues.

RESPONSE #1: The department thanks providers for this feedback and believes the updated rules will enhance the quality of services provided to youth and families while managing a fiscally sound case management program.

COMMENT #2: One commenter questioned whether the current COVID-19 emergency would impact the effective date for the updates to the rules.

RESPONSE #2: COVID-19 will not impact any of the changes listed to occur retroactively to March 1, 2020, including rate changes. The department agrees that providers may need additional time to implement other changes as a result of COVID-19, and the effective date will be extended to November 1, 2020.

COMMENT #3: One commenter raised concerns that the proposed Targeted Case Management (TCM) rate for youth with Serious Emotional Disturbance (SED) is too low and will make it challenging for providers to build a new client base.

RESPONSE #3: The department worked with multiple providers to identify the cost of providing TCM for youth with SED, including the additional requirements in the proposed rule. The department did not identify any additional costs associated with providing TCM for youth with SED and therefore will not make adjustments to the rate.

COMMENT #4: A commenter raised concern that the mechanism to limit caseload is unclear and there is no cap for caseloads in the rule, or any means by which a TCM manager would be able to accept or refuse cases depending on current caseload.

RESPONSE #4: The department's goal with this rule is to ensure flexibility for providers to ensure youth receive the appropriate treatment. For example, with

caseload caps at times of turnover, providers have reported issues with having a provider available to continue to serve the youth. In addition, when reviewing this language with the workgroup it was discussed that a manageable caseload size can vary based on the complexity of the individual case, and capacity of the individual case manager. For these reasons the department recommends allowing providers flexibility to make this decision based on the targeted case manager's skill level and individual case complexities. In addition, this language is being adopted from TCM standards of a nationally recognized accreditation agency.

COMMENT #5: One commenter expressed concern that the definition of "natural supports" includes both services that are mandatory and services that are voluntary and that voluntary services may be stopped at any time.

RESPONSE #5: The department agrees that requirements for those with legal responsibility of the youth need to be differentiated from supports provided by community members and other natural supports. The department believes this is expressed throughout the rules as written. The administrative rules for TCM for Youth with SED focus on the youth's family or caregivers; however, all supports outside of provider care are intended to be included in "natural supports." The department's goal with the term "natural supports" is to ensure providers are identifying individuals and organizations who support the youth outside of the provider community and identify and include them in the treatment plan. Regarding the concern that natural supports can be entirely voluntary, the rules require treatment plans to be updated every 90 days or when the youth's condition changes. Thus, an updated treatment plan would be required if the youth's natural support system changes.

COMMENT #6: The department received several comments related to the current COVID-19 emergency situation.

RESPONSE #6: The department is pursing COVID-19 updates through other avenues as they do not relate to MAR Notice No. 37-911.

COMMENT #7: A commenter asked the reason for removing ICD-10 codes from the manual and requested that the codes remain.

RESPONSE #7: The department proposes removing references to ICD-10 codes in the manual to increase flexibility to utilize updated ICD-10 codes as they become available, without delay caused by an administrative rule process. The department will continue to publish the diagnoses in the manual, and the ICD-10 codes will be posted separately on the Children's Mental Health Bureau (CMHB) website to ensure the list can be updated as codes change.

COMMENT #8: One commenter had concern that the service requirements for Therapeutic Group Homes (TGH) on page 26 of the manual cuts off at (f).

RESPONSE #8: The full item (f) reads, "submit a discharge notification form within ten business days of the discharge of a youth from the TGH which can be found at CMHB Forms." There are not any proposed changes in the area that was cut off. The department appreciates the commenter bringing this to our attention and it will be corrected in the published manual.

COMMENT #9: A commenter stated that there is a section in the proposed manual that still references a limit of 10 outpatient therapy sessions for youth without an SED.

RESPONSE # 9: The department appreciates the commenter bringing this to our attention and it will be corrected in the published manual.

COMMENT #10: A commenter requested clarification regarding how the 60 consecutive days of TCM will work for a youth placed in a PRTF if discharge was planned and then the youth regressed.

RESPONSE #10: If there are extenuating circumstances and the youth does not discharge from PRTF as outlined in the discharge plan due to a change in condition and the medical records clearly document the reason for the change in the discharge plan, the department will not recover reimbursement already paid for the services that were provided when the youth's plan documented an anticipated discharge within 60 days. However, federal requirements allow a maximum of 180 days of TCM services prior to discharge, even if the discharge plan changed. The department will not reimburse providers for TCM services provided beyond 180 days prior to discharge.

COMMENT #11: One commenter requested Mental Health Center (MHC) rules also be updated to align with proposed ARM 37.87.823 to require treatment plans be updated within 21 days of admissions.

RESPONSE #11: MHC rules currently allow for the individualized treatment plan be completed within 5 contacts, or within 21 days of the first contact, whichever is later. The department will not make the suggested change at this time; however, we will consider this change in future updates.

COMMENT #12: A commenter requested the department indicate which regulatory requirements mandate compliance for reimbursement purposes versus those regulatory requirements that pertain to licensing requirements.

RESPONSE #12: Reimbursement requirements are currently located in program rules as well as licensing rules; therefore, any of these rules may be used for purposes of Medicaid SURS reviews. The department recognizes potential confusion and plans to address in future rule changes.

COMMENT #13: A commenter inquired about the process for getting approval for a standardized assessment tool.

RESPONSE #13: The department will post approved standardized assessment tools on the CMHB website. Currently the approved assessment tools are the Child and Adolescent Service Intensity Instrument (CASII) and the Early Childhood Service Intensity Instrument (ECSII).

COMMENT #14: A commenter supports the idea of preparing families for treatment teams per ARM 37.87.823(6)(a) through (e), but stated some potential concerns. Some families may not be able or willing to meet twice and other families such as CPS-involved families may not be located in the same area as the provider, making it challenging to attend two meetings.

RESPONSE #14: The department agrees with the commenter's concerns and will add clarifying language to the final rules stating that the checklist should be completed face-to-face, unless the family or caregiver is unable to meet face-to-face. If phone contact is used in lieu of a face-to-face meeting, the youth's file should demonstrate the inability of the family or caregiver to meet face-to-face.

COMMENT #15: A commenter raised concerns that it may be challenging to demonstrate compliance with ARM 37.87.823(7)(b), pertaining to respecting the youth's family's culture.

RESPONSE #15: The department recognizes that documenting compliance of this requirement may be difficult, and as such, will work with providers to develop a worksheet that can be completed upon admission to TCM services.

COMMENT #16: A commenter requested clarification on the 20 hours of training required in ARM 37.106.1935(2)(d), specifically if training such as CPR, First Aid, HIPAA, and Workplace Harassment count toward this training.

RESPONSE #16: The intent of this section is to focus on competencies in the specific skills listed in (i) and (ii); therefore, standard onboarding trainings such as CPR, First Aid, HIPAA, and Workforce Harassment would not meet this requirement.

COMMENT #17: A commenter agreed with the importance of including natural supports in treatment team planning and suggested updating the wording in ARM 37.87.823(8)(a) to include natural supports identified or treatment goals associated to the development of a natural support system.

RESPONSE #17: The department agrees with the recommended update and will make the recommended change in the final rule.

COMMENT #18: One commenter suggested the department remove the frontier differential rate due to administrative complexities and raise the standard rate.

RESPONSE #18: One of the department's goals is to increase access for youth residing in frontier areas. Due to the nature of case management services,

additional costs are associated with serving youth in frontier areas. The frontier rate is meant to reimburse providers for additional costs to serve youth and families in remote areas. Providers will bill with a modifier if the youth's home community is within one of the 46 frontier counties. The department will evaluate the effectiveness of this method and may make revisions at a later date, if appropriate.

COMMENT #19: The department received several comments that were not applicable to the rules being amended or repealed in this notice.

RESPONSE #19: Comments not related to the rules being amended or repealed will not be responded to in this notice.

6. The department intends that the following rule amendments are to be retroactively effective to March 1, 2020: the proposed fee schedule, ARM 37.85.106; proposed changes to the manual adopted pursuant to ARM 37.87.903 relating to home support services and to the diagnosis codes and list of SED; and increasing the limit for outpatient therapy from 10 to 24 for youth who do not have an SED, ARM 37.87.903.

7. All remaining rule amendments and rule repeals are to be effective November 1, 2020.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State April 7, 2020.