

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

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I through XV, the amendment)	AMENDMENT, AND REPEAL
of ARM 37.90.401, 37.90.402,)	
37.90.403, 37.90.406, 37.90.408,)	
37.90.410, 37.90.412, 37.90.413,)	
37.90.415, 37.90.416, 37.90.417,)	
37.90.420, 37.90.425, 37.90.430,)	
37.90.431, 37.90.438, 37.90.447,)	
37.90.448, 37.90.449, and 37.90.450,)	
and the repeal of ARM 37.90.428,)	
37.90.429, 37.90.432, 37.90.436,)	
37.90.437, 37.90.440, 37.90.441,)	
37.90.442, 37.90.445, 37.90.446,)	
37.90.460, and 37.90.461, pertaining)	
to Home and Community Based)	
Services for Adults with Severe and)	
Disabling Mental Illness)	

TO: All Concerned Persons

1. On May 15, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-918 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 861 of the 2020 Montana Administrative Register, Issue Number 9.

2. The department has adopted the following rules as proposed: New Rule I (37.90.409), New Rule II (37.90.414), New Rule III (37.90.439), New Rule IV (37.90.451), New Rule V (37.90.452), New Rule VI (37.90.453), New Rule VII (37.90.454), New Rule VIII (37.90.455), New Rule IX (37.90.433), New Rule X (37.90.419), New Rule XII (37.90.418), New Rule XIV (37.90.435), and New Rule XV (37.90.426).

3. The department has amended the following rules as proposed: ARM 37.90.401, 37.90.403, 37.90.406, 37.90.408, 37.90.410, 37.90.412, 37.90.413, 37.90.415, 37.90.416, 37.90.417, 37.90.420, 37.90.430, 37.90.431, 37.90.438, 37.90.447, 37.90.448, 37.90.449, and 37.90.450.

4. The department has repealed the following rules as proposed: ARM 37.90.428, 37.90.429, 37.90.432, 37.90.436, 37.90.437, 37.90.440, 37.90.441, 37.90.442, 37.90.445, 37.90.446, 37.90.460, and 37.90.461.

5. The department is withdrawing New Rule XI for the reasons set forth in Comment and Response #1.

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

NEW RULE XIII (37.90.434) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: LIFE COACH

(1) through (5) remain as proposed.

(6) Life coach services may not duplicate services provided under behavioral intervention assistant ~~or payee services~~.

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

IMP: 53-6-402, MCA

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

37.90.402 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: THE PROVISION OF SERVICES (1) The services available through the waiver program are:

(a) through (o) remain as proposed.

~~(p) payee, as defined in ARM 37.90.440;~~

(q) through (t) remain as proposed but are renumbered (p) through (s).

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

IMP: 53-6-402, MCA

37.90.425 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CASE MANAGEMENT

(1) and (2) remain as proposed.

(3) A case management team must consist of:

(a) remains as proposed.

(b) a ~~licensed~~ social worker with a bachelor's degree and two consecutive years' experience providing case management services to adults with severe and disabling mental illness.

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

IMP: 53-6-402, MCA

8. 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: As part of the review process of the department's 1915(c) Home and Community Based, Severe and Disabling Mental Illness waiver renewal application, the Centers for Medicare and Medicaid Services (CMS) requested

additional information about the payee service, as proposed in New Rule XI. The department responded to this request and then participated in a follow-up call with CMS on June 11, 2020. At that time, CMS informed the department that the payee service is not a reimbursable service through the waiver because allowable activities on the waiver are limited to services in which the provider assists the member with financial management. CMS said the waiver cannot reimburse an entity for receiving a member's money and paying the member's financial obligations on behalf of the member.

RESPONSE #1: As a result of the information from CMS, the department has removed payee services from the waiver application. Therefore, the department must withdraw New Rule XI from this rule notice and cannot reimburse providers for payee services. The life coach service may continue to be used to assist a member in managing his or her financial obligations. The life coach service, however, may not be used to bill for payee services. Medicaid members may still access payee services through the Social Security Administration or Veterans Affairs.

A note about Life Coach: Well before the rule in its current form was proposed, the department held a stakeholder meeting about proposed waiver changes. At this meeting, the department proposed to combine homemaker, habilitation aide, personal assistant, and life coach services into one comprehensive service. This was in order to remove duplicative services and to provide an enhanced behavioral aide service. Stakeholders raised concerns about this proposal, and the rule notice does not have the proposed combined service. Instead, the rule notice has a new behavioral intervention assistant service and retains life coach service.

COMMENT #2: A commenter expressed concern about the addition of the licensure requirement in ARM 37.90.425 for social workers on waiver case management teams.

RESPONSE #2: The department reviewed the requirements in the 1915(c) Home and Community Based, Severe and Disabling Mental Illness waiver renewal application and will remove the reference to the licensed social worker. The minimum requirements as stated in the application for social workers are a bachelor's degree and at least two years' experience.

COMMENT #3: A commenter would like clarification if the program supervisor position in the Intensive Mental Health Group Homes and the Mental Health Group Homes is a clinical position.

RESPONSE #3: Licensure requirements for mental health group homes define a program supervisor as a licensed mental health professional (ARM 37.106.1902) and require that mental health group homes hire or contract with a program supervisor (ARM 37.106.1938). The proposed rule is consistent with current licensure requirements.

9. The department intends these rule adoptions, amendments, and repeals to be effective July 1, 2020.

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

/s/ Marie Matthews for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.