

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

In the matter of the adoption of New Rule I and the amendment of ARM 37.40.1426 pertaining to home and community-based services) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT)

TO: All Concerned Persons

1. On August 27, 2020, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/97720389601; meeting ID: 977 2038 9601; or

(b) Dial by Telephone +1 646 558 8656; meeting ID: 977 2038 9601. Find your local number: https://mt-gov.zoom.us/u/adJ9gja57.

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 August 21, 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 rule as proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF POLICY MANUAL

(1) For purposes of this subchapter, the department adopts and incorporates by reference the Big Sky Waiver Program Policy Manual dated October 1, 2020. The purpose of the manual is to implement requirements for utilization management and services under the Home and Community-Based Services program.

(2) A copy of the Big Sky Waiver Program Policy Manual may be obtained from the Department of Public Health and Human Services, Community Services Bureau, jsark@mt.gov; 406-444-4544, P.O. Box 4210, Helena, MT 59604, or by accessing: https://dphhs.mt.gov/SLTC/BigSkyWaiverPolMan.

AUTH: 53-2-201, 53-6-101, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-131, 53-6-141, 53-6-402, MCA

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.40.1426 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: NOTICE AND FAIR HEARING

(1) The department provides written notice to an applicant for a ~~consumer member~~ of services when a determination is made by the department concerning:

(a) and (b) remain the same.

(c) feasibility, including cost-effectiveness of services to the ~~consumer member~~; and

(d) termination of ~~consumer's~~ member's eligibility for the program.

(2) The department provides a ~~consumer member~~ of services with notice ~~ten working~~ 30 calendar days before termination of services due to a determination of ineligibility with the exception of the following circumstances:

(a) death of a member;

(b) written request of a member that he or she no longer wishes the services;

(c) the member is admitted to a nursing facility, hospital, or transitional care unit; or

(d) the member is temporarily absent from receiving services for 30 or more consecutive calendar days.

(3) and (4) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

5. STATEMENT OF REASONABLE NECESSITY

NEW RULE I

The Department of Public Health and Human Services (department) is proposing New Rule I to adopt and incorporate by reference the Big Sky Waiver Program Policy Manual (policy manual). The policy manual is an existing document that supplements the requirements of the Big Sky Waiver program currently set forth in federal and state statute, federal and state administrative regulations, and the state's approved section 1915(c) Home and Community Based Services Waiver. The current version of the policy manual is located at: <https://dphhs.mt.gov/SLTC/BigSkyWaiverPolMan>.

As part of this rulemaking, the department is also proposing to revise the policy manual by removing references to outdated sections and updating language within the manual to align with current law. The revised version of the policy manual the department is proposing to adopt and incorporate by reference is located at: <https://dphhs.mt.gov/SLTC>.

The department is proposing this rule in response to stakeholder feedback concerning the need to ensure that the requirements of the Big Sky Waiver program are uniformly addressed in administrative rule and accessible in a centralized

location to members of the public. The proposed rule is designed to increase stakeholder engagement, offer members of the public the opportunity to provide comment on the policy manual, and ensure any substantive program requirements within the policy manual are made part of administrative rule.

ARM 37.40.1426

This rule governs the notice requirements and fair hearing process that applies when the department determines a member is ineligible for Big Sky Waiver services. The rule currently requires that the department provide a member with 10 working days of advance written notice prior to terminating services. The department is proposing to revise the rule to increase this notice period to 30 calendar days. This revision is being proposed in response to stakeholder feedback and to allow members a greater period of time to contest a decision to terminate services prior to termination taking effect. The department is also proposing to revise the rule to specify the limited circumstances under which providing 30 days' advance written notice of termination would not be appropriate or feasible. These limited circumstances are set forth in (2)(a) through (2)(d) of the rule and are the type of circumstances under which federal regulations allow for notice to be sent until the date of termination. See 42 CFR § 431.213.

Additionally, the department is proposing to revise the rule for clarity by using the term "member" in lieu of "consumer."

The department is proposing these rules to be effective October 1, 2020.

Fiscal Impact

There is no anticipated fiscal impact with respect to this rulemaking.

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., September 4, 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 adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. 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 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/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State July 28, 2020.