

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 37.70.305, 37.70.311,) PROPOSED AMENDMENT
37.70.401, 37.70.402, 37.70.406,)
37.70.407, 37.70.408, 37.70.601,)
37.70.607, and 37.70.901 pertaining)
to low income energy assistance)
program (LIEAP))

TO: All Concerned Persons

1. On September 17, 2020, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed 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/96153203389>; meeting ID: 961 5320 3389; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 961 5320 3389. Find your local number: <https://mt-gov.zoom.us/j/96153203389>.

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 September 11, 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:

37.70.305 APPLICATION (1) through (3) remain the same.

(4) Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP

benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(5) through (7) remain the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS AND VERIFIABLE ELIGIBILITY REQUIREMENTS (1) through (6) remain the same.

(7) Eligibility in regard to income is based on the household's income in the ~~six~~ three months immediately preceding the month of application, which will be annualized by multiplying that figure by ~~two~~ four to arrive at the household's annual income.

(8) remains the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including, but not limited to, wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the ~~six~~ three months immediately preceding the month of application, which will be annualized by multiplying that figure by ~~two~~ four.

(a) For households with self-employment income, annual gross income means gross receipts for the ~~six~~ three months preceding the month of application minus self-employment deductions for the ~~six~~ three months preceding the month of application which will be annualized by multiplying that figure by ~~two~~ four. For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.

(2) through (11) remain the same.

(12) "Gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, which was received by members of the household in the ~~six~~ three months immediately preceding the month of application.

(13) through (24) remain the same.

(25) "Modified LIEAP benefit" means the amount paid to eligible households who reside in publicly subsidized housing and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit

Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season or a minimum payment of \$25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(26) through (42) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) through (6) remain the same.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of \$25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) and (9) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through eight members with annual gross income at or below 60 percent of the estimated state median are eligible for LIEAP benefits on the basis of income. Households with nine or more members are eligible for LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150 percent of the ~~2019~~ 2020 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, or TANF-funded cash assistance.

(2) The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, ~~2019-2020~~ 2020-2021 heating season. The LIEAP table of income standards, ~~2019-2020~~ 2020-2021 heating season, is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained

from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.407 EXCLUDED INCOME (1) The following types of unearned income are excluded or deducted:

(a) through (s) remain the same.

(t) foster care payments received for a foster child or adult if the LIEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include the foster adult or child as a member of the household. Additionally, any foster care payments received during the ~~six~~ three months immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded;

(u) through (w) remain the same.

(x) nonrecurring lump sum payments, such as, but not limited to, federal and state income tax refunds, one time insurance payments or worker's compensation payments and retroactive SSI or SSDI payments, but only to the extent that the payment does not constitute income or benefits for any of the ~~six~~ three months immediately preceding the month of application. The funds received from a nonrecurring lump sum payment are considered as a resource until the funds are spent, however;

(y) through (ab) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the ~~2019-2020~~ 2020-2021 heating season. The LIEAP table of resource standards is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620.

(5) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the ~~2019-2020~~ 2020-2021 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at <http://www.dphhs.mt.gov/hcsd/energyassistance.aspx> or a copy may be obtained

from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the LIEAP Benefit Award Matrix for the ~~2019-2020~~ 2020-2021 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the LIEAP Benefit Award Matrix for the ~~2019-2020~~ 2020-2021 heating season.

(3) remains the same.

(4) Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season or a minimum payment of \$25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor will be paid a benefit in the amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season and will be paid as follows:

(a) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the ~~2019-2020~~ 2020-2021 heating season. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20.

(3) and (4) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) through (3) remain the same.

(4) Emergency assistance payments may be made on behalf of the eligible household for actual costs necessary to alleviate the emergency. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments. ~~Emergency assistance payments are limited to a total of \$250 per household in a 12-month period commencing on the first of October immediately preceding the date of the request for emergency assistance, except as follows:~~

~~(a) An eligible household may receive emergency assistance payments which total more than \$250 in a 12-month period if the local contractor determines services are necessary to alleviate an emergency.~~

(5) through (8) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.70.305; 37.70.311, 37.70.401; 37.70.402; 37.70.406; 37.70.407, 37.70.408; 37.70.601; 37.70.607, and 37.70.901 pertaining to the Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP.

ARM 37.70.305, 37.70.401, 37.70.402, 37.70.601, and 37.70.607

The department is proposing to amend these rules by providing that an updated LIEAP Benefit Award Matrix will be used for the 2020-2021 heating season. ARM 37.70.601 provides that, in most cases, an eligible household's benefit is computed by multiplying the applicable amount in the table of base benefits found in the LIEAP Benefit Award Matrix by the applicable multiplier from the table of income/climatic adjustment multipliers also found in the LIEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIEAP Benefit Award Matrix for 2019-2020 are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2020-2021 heating season, the estimated number of households that will apply and be found eligible for LIEAP for the 2020-2021 season, and fuel cost projections for the 2020-2021 heating season. If the amounts in the benefit tables were not updated for the 2020-2021 heating season, the amount of benefits paid out for the season might exceed available funding or a

large amount of funds that could have helped low income households heat their homes might go unspent.

In addition to the table of base benefits, the LIEAP Benefit Award Matrix also contains a table of income/climatic adjustment multipliers. These multipliers are based on a household's income as a percentage of the federal poverty guidelines and also on what part of the state the household lives in. The state is divided into ten regions with different multipliers to take into account the climatic differences from one part of the state to another, which have an impact on residential heating costs. It is not necessary to revise the multipliers annually because the factors on which they are based do not vary significantly from year to year. The department is not proposing any changes to the table of income/climatic adjustment multipliers in the LIEAP Benefit Award Matrix for 2020-2021 for this reason.

ARM 37.70.406

The department proposes to amend this rule to provide that it will use the U.S. Department of Health and Human Services' poverty guidelines for 2020-2021, rather than the federal poverty guidelines for 2019-2020, in the table of income standards used to determine eligibility for LIEAP for the 2020-2021 heating season. This change is necessary to take into account increases in the cost of living. The department uses the poverty guidelines for the current year because they are usually higher than the guidelines for the previous year, resulting in higher standards for the current heating season. If the department did not use the updated guidelines, some households might be ineligible for LIEAP due to inflationary increases in the household's income that do not reflect an increase in buying power.

ARM 37.70.408

The department is proposing to amend this rule by updating the date of the LIEAP Table of Nonbusiness Resource Limits used to determine LIEAP eligibility based on resources. This is necessary because (5) provides that the dollar limits on non-business resources will be revised annually to adjust for inflation by multiplying the current dollar limits by either the percentage increase in the consumer price index (CPI) for the previous calendar year or 3 percent, whichever is less. The increase in the CPI for 2019 was 2.3%, so the dollar amounts in the LIEAP Table of Nonbusiness Resource Limits for the 2020-2021 heating season will increase by 2.3%. If the resource limits were not revised annually to adjust for inflation, some households might be ineligible for LIEAP because their resources exceed the resource limit although the buying power of their resources was less than in previous years due to inflation.

ARM 37.70.311, 37.70.401, and 37.70.407

The department is proposing to amend these rules to change LIEAP eligibility related to household income based on six months to income based on three months annualized. This will allow for more low-income households to qualify for LIEAP.

The U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, the federal agency that administers LIEAP, issued guidance to encourage states to develop LIEAP policies and procedures that do not discourage, delay, or deny LIEAP benefits to eligible persons. At times, the current LIEAP eligibility requirement related to household income based on six months discourages, delays, or causes denial of LIEAP benefits to eligible persons. Often LIEAP applications are incomplete due to missing income verification. If a household fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of the most recent request for additional information, the application will be denied as per ARM 37.70.311(1)(c). Changing the household income verification from six months to three months annualized will decrease the number of denials and expedite the issuance of LIEAP benefits to low income households.

ARM 37.70.901

The department is proposing that the language that limits emergency assistance payments to \$250 per household in a 12-month period be removed. This will allow ARM 37.70.901 to reflect current practice. The department does not limit the amount of expenditures per household in a 12-month period. Contingency Revolving Funds are used to alleviate emergency situations. The department does not restrict the amount of funds that can be used to alleviate an emergency situation. This change will ensure the rule matches current program policies and procedures.

Fiscal Impact

LIEAP is 100 percent federally funded. Based upon the information available at this time, the department estimates that Montana will receive comparable funding to the last heating season. Energy burden reduction levels resulting from the LIEAP benefits for households using all types of heating fuel and for all dwelling types are expected to be comparable to the 2019-2020 heating season. It is estimated that 20,000 households will qualify for LIEAP benefits this year which is comparable to last year.

The department intends to apply these changes retroactively to October 1, 2020. A retroactive application of these proposed rule amendments does not result in a negative impact to any affected party.

5. 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 dphslegal@mt.gov, and must be received no later than 5:00 p.m., September 25, 2020.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Ann Hefenieder
Ann Hefenieder
Rule Reviewer

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

Certified to the Secretary of State August 18, 2020.