



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-168.1

Summary

Amendment of ARM 37.47.101, 37.47.102, 37.47.106, and 37.47.111 and repeal of ARM 37.47.107, 37.47.901, 37.47.904, and 37.47.905 pertaining to adult protective services

Hearing Date and Time

Thursday, March 13, 2025, at 9:00 a.m.

Virtual Hearing Information

Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88203004116?pwd=wtFTnfoZHvLTi6WqAvleXSmbBjVeMu.1>

Meeting ID: 882 0300 4116, and password: 271918;

Dial by telephone: +1 646 558 8656, meeting ID: 882 0300 4116, and password: 271918.

Find your local number: <https://mt-gov.zoom.us/u/kej5YVYtwq>

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, March 21, 2025, at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by Thursday, February 27, 2025, at 5:00 p.m.

Contact

Bailey Yuhas
(406) 444-4094
hhsadminrules@mt.gov
Fax: (406) 444-9744

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

37.47.101 ADULT PROTECTIVE SERVICES: PURPOSE

- (1) ~~Adult protective services are services intended to reduce or remove the risk of physical or mental harm that has occurred or is occurring to a vulnerable adult, as a result of abuse, neglect, or exploitation.~~ Adult Protective Services (APS) investigates allegations of abuse, sexual abuse, neglect, or exploitation of vulnerable adults.
- (2) APS does not provide direct support or personal care services but may refer individuals to state and local providers offering services aimed at reducing risk and addressing concerns related to adult maltreatment.

Authorizing statute(s): 52-3-205, 52-3-802, MCA

Implementing statute(s): 52-3-205, 52-3-804, MCA

37.47.102 ADULT PROTECTIVE SERVICES: DEFINITIONS

As used in this subchapter, the following definitions apply:

- (1) ~~"Aged person" means a person 60 years of age or older. "Adult maltreatment" has the meaning provided in 45 CFR 1324.401.~~
- (2) "Department" means the Department of Public Health and Human Services, as defined in 2-15-2201, MCA.
- ~~(3) "Disabled adult" means a person 18 through 59 years of age who is defined as disabled pursuant to 53-19-102, MCA, or who is a person with developmental or intellectual disabilities, as defined in 53-20-102, MCA, or who is determined to be:~~
 - ~~(a) disabled by the Social Security Administration;~~
 - ~~(b) fully disabled by the Veterans' Administration;~~
 - ~~(c) disabled by the department's Vocational Rehabilitation Division;~~
 - ~~(d) adjudicated disabled by a court of competent jurisdiction;~~
 - ~~(e) eligible for the medically needy program, as set forth in ARM 37.82.1107, because of disability; or~~
 - ~~(f) intellectually disabled as determined by the department as defined by 53-20-102, MCA.~~
- ~~(4)~~(3) "Non-voluntary services" means emergency protective services provided under court order to a vulnerable adult.
- ~~(5)~~(4) "Protective services" ~~means services to reduce or remove the risk of physical or mental harm that has occurred or is occurring to a vulnerable adult, as a result of abuse, neglect, or exploitation~~ has the meaning provided in 52-3-202, MCA.
- ~~(6)~~(5) "Voluntary services" means protective services requested or accepted by a vulnerable adult.
- ~~(7)~~(6) "Vulnerable adult" ~~means an "aged person" or "disabled adult."~~ has the meaning provided in 52-3-803, MCA.
- ~~(8)~~(7) "Ward" means an incapacitated person for whom a guardian has been appointed by a court of competent jurisdiction.

Authorizing statute(s): 52-3-205, 52-3-802, MCA

Implementing statute(s): 52-3-205, 52-3-804, MCA

37.47.106 ADULT PROTECTIVE SERVICES: AVAILABLE SERVICES

(1) Adult protective services will be provided when necessary to any vulnerable adult.

~~(1)~~(2) Voluntary services include, but are not limited to:

- (a) identifying ~~persons~~ vulnerable adults needing protective services through ~~referrals~~ reports received;
- (b) investigating ~~referrals~~ reports of adult maltreatment and identifying ~~problems~~ to determine the extent and types of services needed;
- (c) ~~assisting in locating behavioral health services for the individual and family;~~ making referrals for:
 - (i) behavioral health services for the vulnerable adult and family;
 - ~~(d)~~ (ii) assisting in locating appropriate alternative living arrangements or protective placements;
 - ~~(e)~~ (iii) enlisting support and services from ~~interested~~ available persons or agencies;
 - ~~(f)~~ (iv) assisting in arrangement of medical health related services; or
 - ~~(g)~~ (v) assisting in locating legal services;
 - ~~(h)~~ providing advocacy; or
 - ~~(i)~~ assisting in arranging services to preserve or enhance the current living arrangement, when desirable, in the best interest of the vulnerable adult.

~~(2)~~(3) Non-voluntary services may include any voluntary service under ~~(1)~~(2) and any other services ordered by the court through guardianship proceedings.

(4) Adult protective services will be provided when necessary, without regard to income, to any vulnerable adult.

(5) Services are available to Montana residents or to any vulnerable adult located in the state of Montana.

Authorizing statute(s): 52-3-205, 52-3-802, MCA

Implementing statute(s): 52-3-205, 52-3-804, MCA

37.47.111 ADULT PROTECTIVE SERVICES: OBTAINING SERVICES

- (1) Unless directed otherwise by the APS bureau chief, the Adult Protective Services office of the county regional office in which near where the vulnerable adult resides or is found will investigate requests reports for protective services of adult maltreatment and make referrals to state and local providers if appropriate.
- (2) Request Referrals for service is may be accepted by from the vulnerable adult on their own behalf or by from any relative or persons interested in the individual's safety and wellbeing an authorized alternate decision-maker, such as a person who holds the vulnerable adult's power of attorney or has been appointed as guardian to the vulnerable adult.
- (3) A request report for service of adult maltreatment may be written, electronic, or oral.
 - (a) All reports must be made through the Adult Protective Services (APS) Intake. This can be by phone or the online reporting portal, and may be made anonymously.
 - (b) If a person calls, visits, or writes to a department office other than the APS Intake to report adult maltreatment, that department office shall refer the person or written communication to the APS Intake.

Authorizing statute(s): 52-3-205, 52-3-802, MCA

Implementing statute(s): 52-3-205, 52-3-804, MCA

REPEAL

The rules proposed to be repealed are as follows:

37.47.107 ADULT PROTECTIVE SERVICES, ELIGIBILITY

Authorizing statute(s): 52-3-205, 52-3-802, MCA

Implementing statute(s): 52-3-205, 52-3-804, MCA

37.47.901 HOME ATTENDANT SERVICES, DEFINITION

Authorizing statute(s): 53-2-201, MCA

Implementing statute(s): 53-2-201, MCA

37.47.904 HOME ATTENDANT SERVICES, ELIGIBILITY

Authorizing statute(s): 53-2-201, MCA

Implementing statute(s): 53-2-201, MCA

37.47.905 HOME ATTENDANT SERVICES, SERVICES AVAILABLE

Authorizing statute(s): 53-2-201, MCA

Implementing statute(s): 53-2-201, MCA

General Reasonable Necessity Statement

The Senior and Long Term Care Division of the Department of Public Health and Human Services proposes updates to the Adult Protective Services (APS) rules, pursuant to Senate Bill 34. Sponsored by Senator Ryan Lynch, adopted by the 2023 Montana Legislature, and signed into law by Governor Gianforte, the law pertains to the protection of vulnerable adults, revising terminology related to protective services and defining vulnerable adult. These changes aim to align Montana's rules with state and national best practices.

The department will amend ARM 37.47.101, 37.47.102, 37.47.106, and 37.47.111. These amendments bring the rules in line with current department operations and satisfy Senate Bill 34.

Additionally, the department intends to repeal ARM 37.47.107, consolidating it into ARM 37.47.106, in order to streamline regulatory language. The repeal of ARM 37.47.901, 37.47.904, and 37.47.905, relating to home attendant services, reflects the fact Adult Protective Services no longer provides home attendance services. APS will refer individuals to state and local providers that are appropriate and meet the needs of a vulnerable adult.

These actions comply with the department's authority under 53-20-205, MCA, as well as 53-20-203, MCA, which requires regular rule review and modification.

ARM 37.47.101

The department proposes to amend this rule to align with current department operations and satisfy sections 10 through 21 of Senate Bill 34, codified as 52-3-803, MCA. APS's primary role, as established through statute, is to investigate allegations of abuse, sexual abuse, neglect, or exploitation that APS receives. This proposed revision intends to clearly state APS's purpose.

ARM 37.47.102

The department proposes to amend this rule to align with current department operations and satisfy section 1 of Senate Bill 34, codified as 52-3-803, MCA. The department also proposes definitions to clarify the scope of APS's investigatory responsibilities and ensure consistency in identifying and addressing abuse, neglect, and exploitation of vulnerable adults. The definitions for "Non-voluntary" services and "Protective Services" are proposed because APS sometimes imposes these services to ensure the health and safety of vulnerable adults. APS does not provide direct support or personal care services. Rather, APS is tasked with investigating allegations of adult maltreatment and referring for services to reduce risk that a vulnerable adult will be subject to abuse, neglect, or exploitation. The proposed addition of a reference to the federal definition of adult maltreatment, as provided in 45 C.F.R. § 1324.401, ensures consistency with existing federal regulations. This would avoid redundancy while providing clear guidance for the application of APS protections, particularly for adults who may not fall under elder-specific provisions.

ARM 37.47.106

The department seeks to clearly define APS's role in service delivery in the proposed revisions to this rule. APS does not provide direct support or personal care services. Its role is to identify the need for services and potential providers, and make appropriate referrals. When necessary, APS may impose non-voluntary or emergency protective services, referring individuals to available services to meet their needs. APS does not provide direct services, whether voluntary or non-voluntary. Additionally, the department proposes to repeal ARM 37.47.107 and consolidate its provisions into this rule. The added language would clarify that APS serves all adults in Montana, regardless of income, and does not investigate allegations of maltreatment occurring outside the state.

ARM 37.47.107

The department proposes to repeal this rule and roll its provisions into ARM 37.47.106. This proposed consolidation is intended to streamline regulatory language and ensure all related information is presented in one comprehensive location.

ARM 37.47.111

The proposed changes to this rule are to better define the APS role in assisting vulnerable adults with obtaining services. APS will refer individuals to state and local providers that are

appropriate and meet the needs of the vulnerable adult. A vulnerable adult or authorized alternate decision-maker may accept voluntary services. All reports are received through APS Intake, through the toll-free phone number 1-844-277-9300, or online at www.aps.mt.gov. All reports of adult maltreatment made to other entities need to be routed to APS Intake, so the report can be properly processed and assigned.

ARM 37.47.901, 37.47.904 and 37.47.905

The department proposes to repeal these rules regarding home attendant services as Adult Protective Services does not provide these types of services. APS will refer individuals to state and local providers that are appropriate and meet the needs of the vulnerable adult.

Fiscal Impact

There are no fiscal impacts associated with these rule amendments and repeals.

Effective Date

The department intends these amendments and repeals to be applied retroactively to October 1, 2023, the effective date of SB 34.

Small Business Impact

Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by mail on September 21, 2023.

Interested Persons

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 listed in this notice.

Rule Reviewer

Mark Prichard

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services