



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-278.2**

**Summary**

Amendment of ARM 37.34.1401, 37.34.1402, 37.34.1404, 37.34.1411, 37.34.1412, 37.34.1418, 37.34.1420, and 37.34.1422 and repeal of ARM 37.34.1405 pertaining to Positive Behavior Support Systems

**Previous Notice(s) and Hearing Information**

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-278.1 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 16, 2025.

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**Final Rulemaking Action – Effective October 11, 2025**

**AMEND AS PROPOSED**

The agency has amended the following rules as proposed:

**37.34.1401 BEHAVIOR SUPPORT: PURPOSE**

**37.34.1402 BEHAVIOR SUPPORT: APPLICABILITY**

**37.34.1404 BEHAVIOR SUPPORT: DEFINITIONS**

**37.34.1411 BEHAVIOR SUPPORT: BEHAVIOR ASSESSMENT**

**37.34.1412 BEHAVIOR SUPPORT: BEHAVIOR SUPPORT PLAN**

### **37.34.1418 BEHAVIOR SUPPORT: PROHIBITIONS**

### **37.34.1420 BEHAVIOR SUPPORT: EMERGENCY PROCEDURES**

### **37.34.1422 BEHAVIOR SUPPORT: RESTRICTED PROCEDURES**

## **REPEAL**

The agency has repealed the following rule as proposed:

### **37.34.1405 POSITIVE BEHAVIOR SUPPORT: DESCRIPTION**

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#### **Statement of Reasons**

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

COMMENT #1: One commenter emphasized that restraints and seclusion should only be used in emergency situations. The commenter also voiced the importance of supporting natural disability processes, not unduly punishing those with developmental or mental health issues, and enabling self-autonomy in community living.

RESPONSE #1: The department clarifies that seclusion and various forms of restraint are prohibited in ARM 37.34.1418. In line with thoughts of the commenter, physical restraints are allowed in only emergency situations as is outlined in ARM 37.34.1418 and 37.34.1420. The department appreciates the commenter's emphasis of the importance of goals such as enhancing self-autonomy. As those apply to this rulemaking, the rules are intended to meet those interests.

COMMENT #2: One commenter requested clarification regarding alignment with the Applied Behavior Analysis (ABA) program and if it is the department's intention for ABA to be a foundation for Behavior Support Services (BSS).

RESPONSE #2: The department clarifies that the department's intent is not for ABA to be a foundation for BSS. Although ABA and BSS have similarities, these are distinct services with different eligibility requirements. In cases where members are eligible for both services, the expectation is that the state plan service is exhausted before accessing a comparable waiver service.

COMMENT #3: One commenter expressed concern that removing "functional" from functional behavior assessments potentially weakens scientific basis and increases subjectivity. The commenter asserted this could cause an issue with Medicaid ABA services.

RESPONSE #3: The department clarifies that the intent behind this change is not to eliminate the use of functional behavioral assessments, but rather to broaden the types of assessments used to identify behaviors. The department does not foresee issues with Medicaid ABA services caused by this change.

COMMENT #4: One commenter expressed that removal of “functional” behavior assessment causes concern, as it is possible to complete a behavior assessment based on topography or form of the behavior and not be able to effectively treat the underlying function of the behavior.

RESPONSE #4: As is provided in Response #3, the department made this change not to eliminate the use of functional behavioral assessments, but to broaden the types of assessments used to identify behaviors. While the department appreciates the commenter’s concerns, the department does not believe that this change will result in less effective treatment of the underlying causes of behaviors.

COMMENT #5: One commenter requested clarification on why the department removed ARM 37.34.1412(2)(a), (b), (d), and (e).

RESPONSE #5: The department clarifies that our intent is to update the outdated terminology and the list of required information for completing the Behavior Support Plan to be more succinct and clear. In recognition of the professionalism of those developing behavior support plans, the department opted for more succinct language to identify key elements.

COMMENT #6: One commenter stated that there is no Institute for Applied Behavior Analysis (IABA) certification and that such certification is not equivalent to a board-certified behavior analyst (BCBA). The commenter asked for clarification on qualifications required.

RESPONSE #6: The department clarifies that certification means a certificate of completion of the IABA longitudinal assessment and analysis course.

COMMENT #7: One commenter requested that Applied Behavior Analysis be identified in the title and practice requirements. They also expressed concern that qualifications for providers are not included in these rules, such as licensing requirements.

RESPONSE #7: The department appreciates the commenter for their suggestion and respectfully disagrees. Although there are similarities between the Applied Behavior Analysis program and Behavior Supports, Behavior Supports allows for a broader scope of professionals than the Applied Behavior Analysis services. Licensing requirements are also beyond the scope of this rulemaking.

COMMENT #8: One commenter asked that BCBAs be included in ARM 37.34.1404(25) as a licensed provider.

RESPONSE #8: The department clarifies that ARM 37.34.1404(25) does not provide an exhaustive list of people considered licensed professionals. It only provides a list of non-exclusive broad examples of licensed professionals. The department does not see a need to specifically add BCBAs at this time.

COMMENT #9: One commenter expressed concern about the removal of environmental support requirements and teaching of replacement behaviors to behavior support plans. The commenter is concerned this could remove proactive components, instead relying on reactive intervention.

RESPONSE #9: The department understands this comment to relate to the changes in ARM 37.34.1412(2). The department removed sections of ARM 37.34.1412(2) for the reasons provided in Response #4. The department does not anticipate that this change for clarity and succinctness will result in behavior support plans now focusing only on reactive intervention. For example, the newly renumbered ARM 37.34.1412(2)(b), (c), and (e) still require proactive considerations. Additionally, ARM 37.34.1411 still requires behavior assessments to consider environmental factors.

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### **Rule Reviewer**

Olivia Schuler

### **Approval**

Charles T. Brereton, Director  
Department of Public Health and Human Services