



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-280.1

Summary

Amendment of ARM 37.40.1013 pertaining to Community First Choice Provider Enrollment

Hearing Date and Time

Friday, March 14, 2025, at 11:00 a.m.

Virtual Hearing Information

Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88455307468?pwd=uFDtoLJKYxArRDtuaG8Cx4pgmlka33.1>

Meeting ID: 884 5530 7468, and password: 547430

Dial by telephone: +1 646 558 8656, meeting ID: 884 5530 7468, and password: 547430.

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

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 Friday, February 28, 2025, at 5:00 p.m.

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

37.40.1013 AGENCY-BASED AND SELF-DIRECTED COMMUNITY FIRST CHOICE SERVICES: PROVIDER ENROLLMENT

- (1) Providers will enroll as a Community First Choice Services (CFCS)/Personal Care Services (PCS) ~~personal care attendant~~ provider, a CFCS/PCS personal emergency response system (PERS) provider, or both. Providers must enroll through the department's fiscal intermediary.
- (2) CFCS/PCS providers must be ~~businesses incorporated under the laws of the state of Montana~~ a business entity formed or registered to do business under Montana law.
- (3) CFCS/PCS providers must submit a description of the proposed service area, which must include, at a minimum, coverage of the entire area of at least one county or Indian reservation.
- (4) CFCS/PCS ~~personal care attendant service~~ providers must comply with onsite visit requirements both before and after enrollment, to verify information submitted to the department.
- (5) CFCS/PCS ~~personal care attendant service~~ providers must provide the documentation to demonstrate the following:
 - (a) general liability insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - (b) motor vehicle liability insurance with split limits of \$500,000 per person for personal injury, \$1,000,000 per accident occurrence for personal injury, and \$100,000 per accident occurrence for property damage; or, combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the provider or its agents, officers, representatives, assigns, or subcontractors;
 - (c) current unemployment insurance and workers' compensation coverage; and
 - (d) verification of completion of the department's mandatory CFCS/PCS training.
- (6) CFCS/PCS ~~attendant-based~~ providers ~~will select~~ must elect to deliver either the agency-based or self-directed CFCS/PCS option. Once a provider has completed a successful compliance review, the provider may enroll in the other service option.
- (7) CFCS/PCS providers must use an Electronic Visit Verification (EVV) system to electronically document the delivery of services and submit claims.

- (a) In accordance with 42 U.S.C. 1396b(l), the EVV system must capture the following data elements:
 - (i) the type of service performed;
 - (ii) the member receiving the service;
 - (iii) the date of the service;
 - (iv) the location of the service delivery;
 - (v) the individual providing the service; and
 - (vi) the time the service begins and ends;
- (b) The use of EVV is required for all members utilizing CFCS/PCS, including members for whom services are provided by a live-in caregiver.

~~(7)~~(8) The department may contract with out-of-state agencies to provide CFCS/PCS for Montana Medicaid members temporarily living out of state.

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

Implementing statute(s): 53-2-201, 53-6-113, MCA

General Reasonable Necessity Statement

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.1013 relating to enrollment of Community First Choice Services (CFCS) and Personal Care Service (PCS) providers to require use of Electronic Visit Verification (EVV).

Section 12006(a) of the federal 21st Century Cures Act, Pub. L. 114-255, signed into law on December 13, 2016, added subsection 1903(l) to the Social Security Act, which mandates that states require EVV use for Medicaid-funded personal care services and home health care services for in-home visits by a provider. EVV is a technology that automates the gathering of service information by capturing time, attendance, and care plan information entered by a home care worker at the point of care.

Under current Centers for Medicare & Medicaid Services (CMS) guidance, federal EVV requirements do not apply if the individual receiving personal care or home health care lives with the caregiver providing the service because CMS does not consider such services to constitute an “in-home visit.” However, states are encouraged to provide appropriate

oversight to services provided by live-in caregivers and may choose to implement EVV to such services, particularly when using discrete units of reimbursement.¹

In Montana, a CFCS/PCS provider is paid in discrete units of reimbursement of 15-minute increments. To control fraud, waste, and abuse, the department is proposing in this rulemaking for EVV requirements to apply to services provided to all members utilizing CFCS/PCS, including members for whom services are provided by a live-in caregiver. EVV combats fraud, waste, and abuse in several different ways. First, EVV provides for accurate timekeeping of services by automatically recording the exact time a caregiver clocks in and out, which prevents errors in time entry and billing for more time than is actually worked in providing services. Second, EVV provides for location verification at the time of services, to confirm a caregiver's location at the time of reported services. Third, EVV facilitates data analysis to proactively allow provider agencies and the department to identify patterns of potential abuse and other concerns, such as excessively long shifts or inconsistent care delivery. Fourth, EVV reduces administrative burden for provider agencies by allowing for automatic timekeeping, reducing the need for manual paperwork and the potential for errors in billing.

The department is also proposing to amend ARM 37.40.1013(2) to clarify that CFCS/PCS providers are required to be business entities that are formed or registered to do business under Montana law. The rule currently provides that CFCS/PCS providers are required to be incorporated. The proposed rule change is necessary to align with the department's existing practice of not limiting provider enrollment to just corporate entities and allowing other types of business entities, such as limited liability companies, to enroll as CFCS/PCS providers.

¹CMS Informational Bulletin, FAQ #1 (Aug. 9, 2019), <https://www.medicaid.gov/federal-policy-guidance/downloads/cib080819-2.pdf>.

Fiscal Impact

There is no fiscal impact associated with this rulemaking.

Contact

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Comments

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 the contact information listed above. Comments must be received by Friday, March 21, 2025, at 5:00 p.m.

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. Written requests may be mailed or delivered to the contact person listed above.

Bill Sponsor Notification

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

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.

Medicaid Performance-Based Statement

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 statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

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.

Rule Reviewer

Robert Lishman

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services