



**MONTANA
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DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-523.1

Summary

Proposed amendment of ARM 37.34.912, 37.40.1407, and 37.90.408 and adoption of NEW RULE 1 pertaining to Home and Community-Based Services Program and Electronic Visit Verification Requirements

Hearing Date and Time

Friday, June 27, 2025, at 9:00 a.m.

Virtual Hearing Information

Join Zoom Meeting

<https://mt-gov.zoom.us/j/81740663908?pwd=BvjnrDiFVHAbgrfemBCRvh4aOJRYpH.1>

Meeting ID: 817 4066 3908 and Password: 440714

Dial by Telephone +1 646 558 8656, Meeting ID: 817 4066 3908 and Password: 440714

Find your local number: <https://mt-gov.zoom.us/u/kbnhO3L4sA>

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 below. Comments must be received by Monday, July 7, 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 Friday, June 20, 2025, at 5:00 p.m.

Contact

Bailey Yuhas
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Fax: (406) 444-9744

Rulemaking Actions

AMEND

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

37.34.912 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PROVIDER REQUIREMENTS

- (1) The Developmental Disabilities Program 0208 Comprehensive Waiver Provider Manual, dated July 1, 2024, sets forth the qualifications and standards that govern the qualified provider and service delivery processes.
 - (a) The department adopts and incorporates by reference the Developmental Disabilities Program 0208 Comprehensive Waiver Provider Manual, dated July 1, 2024.
 - (b) A copy of the Developmental Disabilities Program 0208 Comprehensive Waiver Provider Manual may be obtained through the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.
- (2) A provider must ensure that services adhere to the requirements of [NEW RULE 1].

Authorizing statute(s): 53-6-113, 53-6-402, MCA

Implementing statute(s): 53-6-101, 53-6-402, MCA

37.40.1407 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: GENERAL REQUIREMENTS

- (1) Services of the program may only be provided by a provider that is enrolled with the department as a Medicaid provider or, in rare instances, through a provider with whom the department is contracting for home and community-based case management services.
- (2) A facility providing services to a recipient must meet all licensing requirements including fire and safety standards as well as other service-specific requirements set forth by the department in this chapter.
- (3) A provider of services must ensure that the services adhere to the requirements of 42 CFR 441.301(c)(4), which permits reimbursement with Medicaid monies only for services within settings that meet certain qualities set forth under the regulation. These qualities include that the setting:
 - (a) is integrated in and facilitates full access of the individual to the greater community;
 - (b) ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid Home and Community-Based Services;
 - (c) is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting;
 - (d) ensures the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;
 - (e) supports health and safety based upon the individual's needs, decisions, or desires;
 - (f) optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to daily activities, physical environment, and with whom to interact;
 - (g) provides an opportunity to seek employment and work in competitive integrated settings; and
 - (h) facilitates individual choice of services and supports, and who provides them.
- (4) A provider of services must meet the requirements necessary for the receipt of reimbursement with Medicaid monies.

~~(5)~~ (5) A provider must ensure that services adhere to the requirements of [NEW RULE 1].

~~(5)~~~~(6)~~ Immediate family members and legally responsible individuals may be paid for the provision of certain services under the following conditions:

- (a) the service is identified in the federally approved waiver;
- (b) the service is specified in the individual's service plan;
- (c) the family member or legally responsible individual meets the provider qualifications and training standards for that service as specified in the federally approved waiver;
- (d) the services do not supplant tasks that are customarily performed by legally responsible individuals; and
- (e) the family member or legally responsible individual may not provide more than 40 hours of service in a seven-day period.

~~(6)~~~~(7)~~ Immediate family members include:

- (a) a spouse; and
- (b) a natural or adoptive parent of a minor child.

~~(7)~~~~(8)~~ A provider may also provide support to other family members in the recipient's household during hours of program reimbursed service if approved by the case management team or FM.

~~(8)~~~~(9)~~ The department adopts and incorporates by reference 42 CFR 441.301(c)(4), as amended January 16, 2014. A copy of this regulation may be obtained at <https://www.ecfr.gov/> or by contacting the Department of Public Health and Human Services, Senior & Long-Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

Authorizing statute(s): 53-2-201, 53-6-101, 53-6-113, 53-6-402, MCA

Implementing statute(s): 53-2-201, 53-6-101, 53-6-402, MCA

37.90.408 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: REIMBURSEMENT

- (1) The department adopts and incorporates by reference the Medicaid Home and Community-Based Services for Adults with Severe and Disabling Mental Illness fee schedule. Unless otherwise provided for in rule, the provider reimbursement rate

for waiver program services is stated in the department's fee schedule as provided in ARM 37.85.105(5)(b). These fees are calculated based on:

- (a) the biennial legislative appropriation; and
 - (b) the estimated demand of covered services during the biennium.
- (2) Medicaid reimbursement for the SDMI HCBS waiver program will be the lesser of:
- (a) the provider's usual and customary charge for the service; or
 - (b) the rate established in the department's Medicaid fee schedule adopted and incorporated into ARM 37.85.105(5)(b).
- (3) The SDMI HCBS waiver program is the payor of last resort and will not reimburse a service that otherwise is or should be paid by another source.
- (4) The SDMI HCBS waiver program will not reimburse for services provided to individuals of an enrolled member's household or family.
- (5) All SDMI HCBS services, except for case management, must be prior authorized before delivery of services. Services that are delivered before prior authorization is received will not be approved and, if reimbursed, may be subject to repayment.
- (6) A provider must ensure that services adhere to the requirements of [NEW RULE 1].

Authorizing statute(s): 53-2-201, 53-6-402, MCA

Implementing statute(s): 53-6-402, MCA

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 ELECTRONIC VISIT VERIFICATION REQUIREMENTS

- (1) Montana Medicaid providers that provide home and community-based services subject to federal Electronic Visit Verification (EVV) requirements must ensure an EVV system is used to electronically document the delivery of EVV services and submit claims.
- (2) Each EVV visit transaction must contain the following data elements, as required by section 12006 of the 21st Century Cures Act, Pub. L. No. 114-225 (Dec. 13, 2016), as codified at 42 U.S.C. 1396b(l)(l) & (5)(A), for:

- (a) the type of service provided;
 - (b) the name of the member who received the service;
 - (c) the name of the service provider who provided the service;
 - (d) the date of the service;
 - (e) the time the service began and ended; and
 - (f) the location, including the address, at which the service was provided.
- (3) In addition to the requirements listed in (2), the department may request additional information deemed necessary to ensure the accurate payment of a claim for services.
- (4) EVV is a requirement for all members utilizing home and community-based services subject to federal EVV requirements, including those who have a live-in caregiver.

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) is proposing to adopt NEW RULE 1 and amend ARM 37.34.912, 37.40.1407, and 37.90.408.

This rulemaking is necessary to ensure that Montana Medicaid providers that provide Home and Community Based Services (HCBS) are in compliance with the Federal Electronic Visit Verification (EVV) requirements as set forth in Section 12006 of the 21st Century Cures Act, 42 U.S.C. 1396b(l)(1) & (5)(A). The rule sets for the Big Sky Waiver (BSW), Severe Disabling Mental Illness (SDMI) Waiver, and 0208 Waiver do not currently reflect these requirements. Accordingly, the department proposes to adopt NEW RULE 1 to outline the federal EVV requirements for HCBS providers and to amend ARM 37.34.912, 37.40.1407, and 37.90.408 to reference the requirements of NEW RULE 1.

NEW RULE 1

NEW RULE 1 would require HCBS providers to ensure an EVV system is used to electronically document the delivery of EVV services and submit claims. This rule would also list data elements each EVV visit transaction must include, as established by federal law, and requires that all members receiving HCBS services be compliant.

ARM 37.34.912, 37.40.1407, and 37.90.408

The proposed amendment to these rules would add a section requiring compliance with proposed NEW RULE 1.

Fiscal Impact

The department does not anticipate a fiscal impact.

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

The department has determined that the class of small businesses affected by this proposed rulemaking are those businesses providing HCBS Waiver services or fiscal management services. The department does not believe the proposed rulemaking will have a probable significant and direct impact on these small businesses given that the department has selected the Open Vendor model for EVV, offering small businesses an EVV system that is free to providers who need a system.

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

Bree Gee

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services