

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 37.27.902, 37.86.4401, )  
37.87.102, 37.87.702, 37.88.101, )  
37.89.201, 37.106.1902, )  
37.106.1936, 37.106.1956 and the )  
adoption of NEW RULE I pertaining )  
to Clinical Mental Health Licensure )  
Candidate Medicaid Service )  
Reimbursement )

NOTICE OF ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On February 23, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1043 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 311 of the 2024 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 37.27.902, 37.86.4401, 37.87.102, 37.88.101, 37.89.201, 37.106.1936, and 37.106.1956.

3. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (37.85.213) IN-TRAINING MENTAL HEALTH PROFESSIONAL SERVICES BILLING MEDICAID (1) through (2)(c) remain as proposed.

(i) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(ii) through (iv) remain as proposed.

(3) The provider's practice setting must:

(a) ~~provide crisis services, medication management, and outpatient mental health services;~~

(b) provide outpatient mental health services;

(c) crisis telephone services that comply with the following requirements:

(i) the service is available 24 hours a day, seven days a week;

(ii) an answering service or unlicensed employees may answer calls and transfer calls to individuals trained to respond to crisis calls;

(iii) written policies and procedures that include:

(A) training requirements for individuals responding to crisis calls;

(B) a policy requiring a mental health professional to be on-site for consultation and backup for unlicensed individuals receiving crisis calls; and

(C) utilization of community resources.

~~(b)~~(d) employ or contract with a licensed health care professional who is licensed to prescribe medication for mental health/behavioral health disorders;

~~(c)~~(e) employ or contract with the licensed mental health professional who is approved by the candidate's licensing board to serve as supervisor to the candidate; and

~~(d)~~(f) have at least one licensed mental health professional on-site or available for face-to-face supervision of the candidate when the supervisor is not available.

(4) The supervisor must provide face-to-face supervision of the licensure candidate in accordance with the licensure board's approved supervision plan and as needed. ~~The provider and supervisor may not charge the candidate for supervision.~~ The designated supervisor must be a supervisor of record with the candidate's licensing board and have assumed responsibility for the candidate's continued training and for services provided by the candidate.

~~(5) The candidate must be an employee of the provider. The provider is not permitted to contract for in-training mental health professional services.~~

~~(6)~~(5) The provider must provide professional liability insurance for the candidate's professional services.

~~(7)~~(6) An in-training mental health professional may not engage in independent practice.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.702 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) and (2) remains as proposed.

(3) "In-training mental health professional services" refers to services provided by a candidate for licensure who:

(a) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(b) through (11) remain as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (18) remain as proposed.

(a) a physician, clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, or professional counselor licensed to practice in Montana;

(b) through (33) remain as proposed.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, 50-5-204, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The department received multiple comments in support of the rule amendments and NEW RULE I.

RESPONSE #1: The department thanks commenters for this feedback and believes the updated rules will expand the availability of mental health professional services to Medicaid members.

COMMENT #2: The department received multiple comments referring to the Department of Labor and Industry (DLI) Board of Behavioral Health's recent rule amendments for clinical mental health in-training licensure candidate services. The comments requested the department ensure coordination with the Board of Behavioral Health's rules. Some comments specifically noted that the Board of Behavioral Health has standards for supervision and requested that these requirements be referenced in this rulemaking. Additionally, several comments were received noting that the Board of Behavioral Health does not use the term "in-training" in their rules and commenters requested that the department use common language.

RESPONSE #2: DLI and DPHHS have different duties and responsibilities with respect to the topic of this rulemaking. DLI is responsible for licensing and establishing standards for behavioral health professionals, including supervision standards. The department is responsible for establishing the circumstances when the Medicaid program will reimburse for certain health care services. The rules proposed by the department do not conflict with rules proposed by DLI. Regarding terminology, the department notes that DLI uses different terms to refer to in-training professionals, depending on the particular license. For uniformity and simplicity, DPHHS has proposed using one term to refer to in-training mental health professionals across relevant licensures. The department has defined "in-training mental health professional" in NEW RULE I(2)(b) and "in-training mental health professional services" in NEW RULE I(2)(c). Within these definitions, the department ensures compatibility with the Board of Behavioral Health rules through reference to ARM Title 24, chapter 189 or 219.

COMMENT #3: The department received multiple comments regarding the use of the term "social worker" along with the suggestion that "licensed clinical social worker" should be used instead.

RESPONSE #3: The department has reviewed the language in question and confirmed the term "social worker" is inconsistent with the language used elsewhere in the rulemaking. Based on these comments, the department will change the term "social worker" to "licensed clinical social worker" in this rule notice. To ensure consistency in terminology, the department will make the same change in other rules relating to the Children's Mental Health Bureau in future rule notices.

COMMENT #4: The department received multiple comments regarding NEW RULE I's proposal to prohibit a supervisor from charging a candidate for supervision. Commenters requested this language be removed because paying for clinical supervision of in-training licensure candidates is standard practice and prohibiting it will result in a financial loss for providers.

RESPONSE #4: In response to these comments, the department will remove proposed language that would have prohibited charging a fee for supervision of in-training licensure candidates.

COMMENT #5: The department received multiple comments regarding New Rule I stating that an in-training mental health professional may not engage in independent practice. The commenters requested this language be removed as some commercial insurances and private-pay clients reimburse in-training mental health professionals for independent practice and this language prohibits that practice.

RESPONSE #5: The department notes that the language in question is limited to Medicaid reimbursement and does not restrict an in-training mental health professional in independent practice providing non-Medicaid funded services from billing private insurance. Accordingly, the department declines to make the suggested change.

COMMENT #6: The department received multiple comments requesting clarification on whether this rulemaking applies to addiction counselors and/or addiction counseling settings.

RESPONSE #6: Addiction counseling licensure candidates are not included in this rulemaking because they are not a provider type listed in this rulemaking notice. In-training mental health professionals providing services to individuals with a substance use disorder (SUD) must have SUD within their scope of practice under their license. Addiction counseling settings would need to meet the requirement set forth in NEW RULE I.

COMMENT #7: The department received one comment regarding NEW RULE I's requirement that a provider's practice setting must provide crisis services, medication management, and outpatient mental health services. The commenter requested the department consider changing "and" to "or."

RESPONSE #7: The standard proposed in this rulemaking notice is in line with requirements for mental health centers. The rulemaking notice removed the

requirement for the provider to provide community-based psychiatric rehabilitation services and chemical dependency services. However, the department believes that maintaining all three requirements listed in the new rule will support comprehensive and quality treatment of Montana Medicaid members. Accordingly, the department declines to make the suggested change.

COMMENT #8: The department received one comment requesting that the language used in this rulemaking makes providing services easier for rural providers.

RESPONSE #8: The department believes these rules will expand the availability of mental health professional services available to Medicaid beneficiaries in all locations.

COMMENT #9: The department received one comment requesting clarification on whether the requirement that the provider's practice setting provide crisis services is similar to the requirement for mental health centers, and whether the new rule will require documentation and reporting to the Office of Inspector General for critical incidents. Additionally, the commenter asked whether the requirement is for 24/7 crisis response services or if the 988 Suicide and Crisis Lifeline may be used to fulfill this requirement, noting that operation of a 24/7 crisis line is expensive and may lead to staff burnout.

RESPONSE #9: NEW RULE I provides that the provider's practice setting must provide crisis services, which includes crisis telephone services. The department has added clarifying language to NEW RULE I to address this comment and to ensure that the requirement for crisis services in NEW RULE I is in conformity with requirements for mental health centers, which are required to have crisis telephone services.

COMMENT #10: The department received one comment requesting clarification on the requirement for the provider's practice setting to require medication management. Specifically, the commenter asked if this requirement is for psychiatric medication management, MAT/MOUD, or all types of medication. The commenter also asked if medication management services may be subcontracted. Further, the commenter asked if the department would allow for the use of APRN services rather than the requirement for a psychiatrist, and if the allowable use of an APRN rather than a psychiatrist medical director would be extended to licensed mental health centers.

RESPONSE #10: The department notes that the new rule states the provider's practice setting may employ or contract with a licensed health care professional and that the professionals must be licensed to prescribe medication for mental health/behavioral health disorders. Licensed health care professionals are defined in ARM 37.106.1902(16): "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the DLI.

COMMENT #11: The department received one comment requesting clarification on the impact of this rulemaking on Indian health, tribal health, and urban Indian health.

RESPONSE #11: Indian Health Service, Tribal 638, FQHC, and urban Indian organizations can currently be reimbursed for in-training mental health professionals. With the adoption of NEW RULE I, the criteria set forth in the new rule must be met to continue reimbursement from Medicaid.

COMMENT #12: The department received one comment requesting clarification on the reference to the Integrated Behavioral Health (IBH) model in the statement of reasonable necessity. The commenter noted that the use of IBH language is confusing and may lead to inappropriate coding and audit risks for the provider's practice setting.

RESPONSE #12: To be reimbursed the provider may only bill procedure codes for which they are already eligible to bill which will ensure proper coding and eliminate audit risks.

COMMENT #13: The department received two comments regarding the requirement in NEW RULE I that the candidate must be an employee of the provider and the provider is not permitted to contract for in-training mental health professional services. One commenter noted that many candidates work for multiple groups and expressed concern that this requirement stifles the candidate's ability to practice. One commenter commented on allowing for contracted work to require the in-training mental health professional be responsible for their own malpractice coverage.

RESPONSE #13: In response to these comments, the department has removed this requirement in the final adopted rule. Specifically, the department removed NEW RULE I(5), as originally proposed. By removing this language, the department has removed the requirement that the candidate must be an employee of the provider.

COMMENT #14: The department received one comment stating that some groups offer pro-bono in-training licensure candidate services and asking if these services may be retroactively billed to Medicaid.

RESPONSE #14: The department intends this rulemaking to be retroactively effective to January 1, 2024. Claims for services may be billed to Medicaid within 365 days from the date of service, provided that the date of service is on or after that date.

COMMENT #15: The department received one comment regarding ARM 37.27.902 expressing concern that this rulemaking will serve as a barrier for Medicaid members to receive needed services in a timely manner.

RESPONSE #15: The proposed rulemaking would expand the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. Expanding reimbursable service locations for behavioral health services will increase access to services in Montana.

COMMENT #16: The department received one comment regarding the format of the proposed amendment to ARM 37.86.4401, stating the department inadvertently struck (8)(a).

RESPONSE #16: The department did not propose striking (8)(a). The proposed amendment to ARM 37.86.4401 reads "(a) through (h) remain the same" and continues to (i).

COMMENT #17: The department received one comment on ARM 37.106.1902 thanking the department for adding the licensed marriage and family therapist provider type.

RESPONSE #17: The department appreciates the feedback and believes the inclusion of licensed marriage and family therapist licensure candidates will expand the availability of mental health professional services available to Medicaid beneficiaries.

COMMENT #18: The department received one comment noting that the commenter did not receive notice of this rulemaking from the department.

RESPONSE #18: 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 must make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406)444-9744; or email [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

5. These rule adoptions and amendments are to be retroactively effective to January 1, 2024.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

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

Certified to the Secretary of State July 30, 2024.