

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.79.201, 37.82.102, ) PROPOSED AMENDMENT  
37.82.701, 37.86.202, 37.86.3402, )  
and 37.86.3405 pertaining to 12- )  
month postpartum continuous )  
eligibility for Medicaid and HMK )

TO: All Concerned Persons

1. On May 30, 2024, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81310377867?pwd=cmcxXErUXA5QTlZUWJlZmpDam5XQT09>, meeting ID: 813 1037 7867, and password: 685914; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 813 1037 7867, and password: 685914. Find your local number: <https://mt-gov.zoom.us/u/kbkCipraF>.

2. The Department of Public Health and Human Services 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. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 16, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under the HMK coverage group if:

(a) the applicant is under 19 years of age, unless the applicant qualifies for postpartum continuous eligibility coverage as defined in ARM 37.82.102;

(b) remains the same.

(c) the family of which the applicant is a member has annual family income, without regard to other family resources, at or below ~~250%~~ 261% of the federal poverty level (FPL);

(d) through (g) remain the same.

(h) ~~for three months prior to enrollment the applicant has not had creditable private health insurance coverage. This requirement is waived if the parent or~~

guardian providing the insurance: the applicant does not have other creditable health insurance.

- ~~(i) dies;~~
- ~~(ii) is terminated or laid off;~~
- ~~(iii) can no longer work due to a disability;~~
- ~~(iv) has a lapse in insurance coverage due to new employment;~~
- ~~(v) had insurance coverage that ended because the stepparent, who provided the coverage, and the parent divorced;~~
- ~~(vi) had coverage through the Insure Montana Program;~~
- ~~(vii) had coverage through the Medicaid Health Insurance Premium Payment (HIPP) program;~~
- ~~(viii) paid more than 50% of the insurance premium;~~
- ~~(ix) has insurance coverage that is not accessible (e.g. coverage is through an HMO in another state);~~
- ~~(x) loses Tricare military health insurance; or~~
- ~~(xi) has an annual aggregate amount of health insurance premiums and cost sharing expenses imposed for coverage of the family of a child which exceeds 5% of the family's income.~~

~~(2) State of Montana and Montana University System employees'; children may be eligible for the HMK coverage group under the following conditions: the family meets HMK income guidelines and the health insurance premiums and cost-sharing expenses exceed 5% of the family's income for the benefit year.~~

~~(3) through (5) remain the same but are renumbered (2) through (4).~~

~~(a) Family income may include one or more of the following:~~

~~(i) remains the same.~~

~~(ii) the income of the parent with whom the child resides the majority of the year, including any child support received for the child, if the child resides with one parent in a single parent household;~~

~~(A)(iii) if the parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the parent with whom the child resides the majority of the year;~~

~~(B)(iv) the income of individuals siblings under the age of 19 who live in the household but do not attend school is imputed to the parent with whom the child resides the majority of the year.~~

~~(b) Family income does not include:~~

~~(i) money received from assets drawn down such as withdrawals from a savings account, an annuity, or from the sale of a house or a car;~~

~~(ii) gifts under the federal annual exclusion, loans, one-time insurance payments, or lump sum compensation for an injury;~~

~~(iii) and (iv) remain the same.~~

~~(v) the interest earned on ~~(5)~~(4)(b)(iii) and (iv);~~

~~(vi) earned income which is excluded and dependent care expenses which are deducted from income under the HMK Plus coverage group;~~

~~(vii) income excluded under federal Medicaid regulations;~~

~~(viii)(vi) foster care income for any children unless the only children in the family are in foster care; or~~

~~(ix)(vii)~~ income of an individual with whom a child resides who has no legal obligation to support the child and does not claim the child as a dependent.

~~(c) Income information will be used by the department to project the family's income.~~

~~(d) The family's debts, medical expenses, or other financial circumstances will not be taken into consideration when determining family income.~~

(6) remains the same but is renumbered (5).

~~(7)(6)~~ Applicants who are losing HMK Plus coverage or who were denied HMK Plus coverage for a reason other than that the family withdrew their application or failed to comply with HMK Plus requirements are evaluated for HMK coverage group via an electronic report. ~~The HMK coverage group eligibility will be determined and applicants will be enrolled in the HMK coverage group or placed on the HMK coverage group's waiting list.~~

(8) through (12) remain the same but are renumbered (7) through (11).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.82.102 MEDICAL ASSISTANCE, DEFINITIONS (1) through (23) remain the same.

(24) "Postpartum continuous eligibility coverage" means members who are currently enrolled in Healthy Montana Kids (HMK) or Medicaid may receive 12 months of continuous postpartum coverage, regardless of any changes in circumstances. The 12-month postpartum period begins on the last day of a member's pregnancy and extends through the end of the month in which the 12-month period ends.

(24) through (35) remain the same but are renumbered (25) through (36).

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

IMP: 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) through (f) remain the same.

(g) A pregnant woman who becomes ineligible for Medicaid due solely to increased income and whose countable resources do not exceed \$3,000 and whose pregnancy is disclosed to the department ~~and verified~~ prior to the effective date of Medicaid closure. This coverage group is known as the "continuous pregnant woman group." Eligibility shall be continuous without lapse in Medicaid eligibility from the prior Medicaid eligibility and shall terminate on the last day of the month in which the 12-month postpartum period ends. ~~which the 60th postpartum day occurs.~~

(h) through (k) remain the same.

(l) A child through the month of the child's 19th birthday, who lives in a household whose income exceeds the categorically needy standards and resources do not exceed the ~~medically needy income and~~ resource standards specified in ARM 37.82.1106, 37.82.1107, and 37.82.1110, ~~provided that the child does not live with a~~

~~parent or specified caretaker relative as defined in the family-related Medicaid Manual, section 201-4.~~ This coverage group is known as the "~~child-family~~ medically needy group."

(m) through (o) remain the same.

(2) Medicaid will continue until the last day of the month in which ~~the 60th postpartum day falls~~ the 12-month postpartum period ends for pregnant women as long as the pregnant woman was eligible for and receiving Medicaid on the date pregnancy ends.

(3) remains the same.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA

IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

37.86.202 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS For the purpose of these rules, the following definitions will apply:

(1) through (11) remain the same.

(12) "Postpartum services" means services rendered to a woman during the ~~60-day~~ 12-month postpartum period following the delivery for any health conditions or complications that are pregnancy-related.

(13) through (16) remain the same.

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

IMP: 53-6-101, MCA

37.86.3402 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, ELIGIBILITY (1) through (3) remain the same.

(4) Targeted case management services may be delivered to the member, if Medicaid eligibility continues, until the last day of the month in which the 12-month postpartum period ~~occurs the 60th day following delivery ends the end of the pregnancy.~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.86.3405 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, COVERAGE (1) and (2) remain the same.

(3) Two post-partum reassessments must occur after delivery and prior to the last day of the month in which the ~~60th day~~ 12-month postpartum period following delivery ~~ends occurs.~~

(4) remains the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.201, 37.82.102, 37.82.701, 37.86.202, 37.86.3402, and 37.86.3405.

The proposed amendments are needed to update rule language to extend Medicaid coverage to postpartum women who are enrolled in Montana's Medicaid and HMK/CHIP programs during pregnancy. The department received approval from the Centers for Medicare & Medicaid Services (CMS) for State Plan Amendments to increase continuous eligibility for postpartum women in Medicaid and HMK/CHIP from 60 days to 12 months after the last day of pregnancy. The rule amendments are necessary to align rule language with the CMS-approved State Plan Amendments.

ARM 37.79.201 Proposed changes would update the age limit language of "19 or under" to ensure members over the age of 19 who are eligible for postpartum coverage can continue to receive HMK coverage. Additionally, the department proposes to remove the three-month wait for HMK for those who previously had other health coverage. Changes are also proposed to reflect current eligibility processes, including considering income when determining eligibility for State of Montana and Montana University employees and not calculating a family's out-of-pocket health care costs, as was previous practice.

ARM 37.82.102 The department proposes to add a definition for "postpartum continuous eligibility coverage," to provide clarity to who qualifies for the postpartum benefit.

ARM 37.82.701 Proposed changes would remove language requiring the department to verify a pregnancy, as it is currently done through self-attestation; update the postpartum coverage language from 60 days to 12 months; and update the language for family medically needy group to reflect current processes.

ARM 37.86.202, 37.86.3402, and 37.86.3405 Proposed changes in these rules would update language to reflect the change of coverage from 60 days to 12 months postpartum.

#### Fiscal Impact

This proposed rule amendment has an administrative cost of \$4,518,146 in state fiscal year (SFY) 2024 and \$4,700,222 in SFY2025. The proposed rulemaking is estimated to provide extended postpartum coverage to 1,027 women in FY24 and 1,037 women in FY25. Those covered under the 12-month postpartum coverage are eligible for the full Medicaid/CHIP benefits package.

5. The department intends to apply these proposed rule amendments retroactively to July 1, 2023.

6. 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: 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 e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., June 7, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. 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 in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. 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.

/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 April 30, 2024.