

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 37.34.3005 pertaining to) PROPOSED AMENDMENT
congregate living reimbursement)
rates)

TO: All Concerned Persons

1. On March 14, 2024, at 11:00 a.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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88667080317?pwd=UDJECfISTnUyb2JuTDhkYWpVYTN4QT09>, meeting ID: 886 6708 0317, and password: 981546; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 886 6708 0317, and password: 981546. Find your local number: <https://mt-gov.zoom.us/u/kekD4YzUJ>.

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 February 29, 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.

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

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Services Manual version 2, effective July 1, 2023. A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf>.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to the congregate living reimbursement rates in the Montana Disabilities Program Services Manual with a retroactive date to July 1, 2023.

There are individuals in the Montana State Hospital (MSH), the Intensive Behavior Center (IBC), out-of-state facilities, and local hospitals throughout the state who likely could be served in a community setting, if providers were willing and able to serve them. These individuals have complex care needs that make securing placement in community services more challenging.

The proposed rule change would amend the DDP manual to add a tenth tier to congregate living in DDP's fee schedule to reflect the care required for individuals with the highest level of complex care needs. The daily rate for Tier 10 level of services will be \$546.04. The new tier will reimburse providers the daily rate for caring for the following categories of people:

1. Individuals with a pending petition for civil commitment to IBC or MSH;
2. Individuals transitioning from MSH or IBC to the community;
3. Individuals with complex care needs in other institutional settings or in-patient hospital; and
4. Individuals who are placed in or may in the future be placed in out-of-state facilities due to their high level of care needs.

Tier 10 level of service is intended to be short term and is available for up to 12 months unless an extension is determined to be medically necessary by the department.

ARM 37.34.3005

The proposed amendment would adopt the Montana Disabilities Program Services Manual version 2 which incorporates the changes specified below:

1. Addition of Tier 10 to Congregate Living fee schedule and associated language.
2. Correction of the index.
3. Clarification to transportation to reflect current practice permitting a temporary service increase for certain outlier scenarios.

Fiscal Impact

The department anticipates 10 clients will be served using the new complex care Tier 10 service in State Fiscal Year (SFY) 2024. Estimated SFY 2024 expenditures total \$830,527, with state share of \$299,322 and federal share of \$531,205.

SFY 2024 State Impact	SFY 2024 Federal Impact	SFY 2024 Total Impact
\$299,322	\$531,205	\$830,527

5. The department intends to apply this proposed rule amendment retroactively to July 1, 2023. Retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

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, and must be received no later than 5:00 p.m., March 22, 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. Written requests may be mailed or delivered to the contact person in paragraph 6.

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 rule 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 February 13, 2024.