

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 37.34.911, 37.34.925,)	PROPOSED AMENDMENT AND
37.34.926, 37.34.929, 37.34.930,)	REPEAL
37.34.933, 37.34.937, 37.34.941,)	
37.34.942, 37.34.946, 37.34.960,)	
37.34.961, 37.34.963, 37.34.967,)	
37.34.968, 37.37.974, 37.34.978,)	
37.34.980, 37.34.981, 37.34.985,)	
37.34.986, 37.34.987, and 37.34.988)	
and the repeal of ARM 37.34.947,)	
37.34.950, 37.34.951, 37.34.973, and)	
37.34.989 pertaining to Medicaid)	
home and community based waiver)	
program)	

TO: All Concerned Persons

1. On June 28, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal 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/85903765981?pwd=c2VkWlJYTmZGOVVNUHBCTWMyUGpRdz09>, meeting ID: 859 0376 5981, and password: 185527; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 859 0376 5981, and password: 185527. Find your local number: <https://mt-gov.zoom.us/u/koaMF763r>.

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 June 14, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.34.911 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: AVAILABLE SERVICES (1) remains the same.

- ~~(a)(y) adaptive equipment~~ specialized medical equipment and supplies, as provided in ARM 37.34.925;
 - ~~(b)(f) adult companion~~ companion services, as provided in ARM 37.34.926;
 - (c) through (g) remain the same but are renumbered (a) through (e).
 - (h) through (k) remain the same but are renumbered (g) through (j).
 - ~~(l) job discovery, as provided in ARM 37.34.947;~~
 - ~~(m) job preparation, as provided in ARM 37.34.950;~~
 - ~~(n) live-in caregiver, as provided in ARM 37.34.951;~~
 - (o) through (v) remain the same but are renumbered (k) through (r).
 - ~~(w)(s) psychological~~ evaluation, counseling, and consultation services, as provided in ARM 37.34.967;
 - (x) through (z) remain the same but are renumbered (t) through (v).
 - ~~(aa) residential training support, as provided in ARM 37.34.973;~~
 - (ab) and (ac) remain the same but are renumbered (w) and (x).
 - (ad) through (ai) remain the same but are renumbered (z) through (ae).
 - ~~(aj)(af) transportation, as provided in ARM 37.34.988; and~~
 - ~~(ak) waiver-funded children's case management, as provided in ARM 37.34.989.~~
- (2) and (3) remain the same.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.925 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ADAPTIVE EQUIPMENT SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES (1) ~~Adaptive equipment~~ Specialized medical equipment and supplies ~~is~~ are equipment necessary for the ~~person~~ waiver recipient to obtain or retain employment or to increase independent functioning in completing activities of daily living.

- (2) ~~Adaptive equipment~~ Specialized medical equipment and supplies must:
 - (a) and (b) remain the same.
 - ~~(c) meet the specifications, if applicable, for the equipment set by the American National Standards Institute (ANSI);~~
 - ~~(d) be prior authorized by the department if the cost of the project may exceed \$4,000; and~~
 - (e) remains the same but is renumbered (c).

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.926 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ADULT COMPANION SERVICES (1) ~~Adult companion~~ Companion services consist of nonmedical supervision and socialization provided to a ~~person with a developmental disability~~ waiver recipient with a functional impairment who is age 14 or older. Companions may assist or supervise the ~~person~~ waiver recipient with tasks such as meal preparation, laundry, light housekeeping, and shopping but

do not perform these activities as discrete services. This service does not entail hands-on nursing care.

(2) Companion services delivered by legally responsible relatives involve personal care or similar services of activities of daily living and/or instrumental activities of daily living.

~~(2)(3)~~ ~~Adult companion~~ Companion services must be provided in accordance with a therapeutic goal.

~~(3)(4)~~ ~~Adult companion~~ Companion services may not be provided concurrent with:

- (a) persons in residential settings in which primary care is funded 24/7; or
- (b) with personal supports services;
- (c) personal care services; or
- (d) homemaker services.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.929 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: ADULT FOSTER (1) through (4)(a) remain the same.

- ~~(b) live-in-caregiver~~ companion services;
- (c) homemaker services; or
- (d) personal care services.
- (5) and (6) remain the same.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.930 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: ASSISTED LIVING (1) Assisted living is a congregate residential setting that provides or coordinates personal care, homemaker services, medication oversight, social and recreation activities, 24-hour supervision and assistance to meet the unpredictable needs of the ~~person~~ waiver recipient, activities, and health-related services. This service is for waiver recipients with conditions that preclude placement in a less restrictive setting.

~~(2) Assisted living is the provision of personal care, 24-hour supervision and assistance, and activities and health-related services.~~

(3) and (4) remain the same but are renumbered (2) and (3).

- (a) personal care services;
- (b) homemaker services;
- (c) remains the same.
- ~~(d) live-in-caregiver;~~

(e) and (f) remain the same but are renumbered (d) and (e).

(5) remains the same but is renumbered (4).

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.933 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: BEHAVIORAL SUPPORT SERVICES (1) Behavioral support services (BSS) teach others to carry out ethical and effective behavior interventions based on positive behavior supports. Behavioral support services staff may supervise the work of others who implement behavior interventions. This service is available at two different levels.

(2) Level one Behavioral support services may include:

(a) through (e) remain the same.

~~(3) A person providing behavioral support services must meet the requirements in ARM 37.34.1422(2).~~

(3) Level one services may be provided by:

(a) a board-certified behavioral analyst-doctoral (BCBA-D), board-certified behavior analyst (BCBA), or board-certified assistant behavior analyst (BCaBA) under the supervision of a BCBA-D or BCBA;

(b) an intermediate applied behavior analysis (ABA) professional or a person with an Institute for Applied Behavior Analysis (IABA) certification; or

(c) either a person with a degree in ABA, psychology, or special education who has provided documentation of training and experience in the use of the principles of ABA as approved by the department.

(4) Level two services include all services identified in level one and:

(a) monitoring and overseeing BSS staff, including a registered behavior technician (RBT) or an intensive behavior assistant (IBA), who are directly implementing treatment;

(b) direct implementation of treatment plans, behavior intervention procedures, skill acquisition procedures, and positive-behavior support plans by an RBT or an IBA.

(5) Level two services may be provided by:

(a) a BCBA-D or BCBA;

(b) a BCaBA under the supervision of a BCBA-D or BCBA; or

(c) an intermediate ABA professional or a person with an IABA certification.

(6) Level two direct treatment must be supervised by a BCBA-D, BCBA, or BCaBA and may be provided by:

(a) an RBT; or

(b) an IBA.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.937 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: COMMUNITY TRANSITION SERVICES (1) through (3)(a) remain the same.

(b) clearly identified in the service plan;

~~(b)(c)~~ (c) the person waiver recipient is unable to meet such an expense; and
(c) remains the same but is renumbered (d).

(4) Community transition services may include:

(a) security deposits required to obtain a lease on an apartment or home;

(b) essential household furnishings and moving expenses required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and bed linens;

(c) set-up fees or deposits for utility or services access, including land line telephone, electricity, heating, and water;

(d) services necessary for the individual's health and safety, such as pest eradication and one-time cleaning prior to occupancy;

(e) moving expenses;

(f) necessary home accessibility adaptations; or

(g) activities to assess, arrange for, and procure needed resources as identified in the plan of care.

(4) remains the same but is renumbered (5)

(a) through (c) remain the same.

(d) household appliances; or

(e) items that are intended for purely recreational purposes;

(f) cellular telephone service; or

(g) internet service.

(5) and (6) remain the same but are renumbered (6) and (7).

~~(7)~~(8) Community transition services may not exceed \$3,000 per person, per transition.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.941 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: ENVIRONMENTAL MODIFICATIONS (1) Environmental modifications are those physical adaptations to the home or vehicle required by the waiver recipient's plan of care, which are necessary to safeguard the health, welfare, and safety of the person, or which enable the person to function with greater independence and without which the person would require institutionalization.

(2) remains the same.

(a) relate specifically to and be primarily for the waiver recipient ~~a person with a disability~~;

(b) have utility primarily for the waiver recipient ~~a person who has a disability~~;

(c) through (e) remain the same.

(f) be prior authorized by the department if ~~the cost of the project may exceed \$4,000.~~

(3) Environmental modifications may not include:

(a) adaptations to the home which are of general utility and are not of direct medical or remedial benefit to the waiver recipient, such as carpeting, roof repair, central air condition; or

(b) adaptations to the home which add to the total square footage of the home.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.942 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: HOMEMAKER (1) Homemaker services are general household activities performed when the person regularly responsible for these activities is unable to manage the home or care for self or others in the home or is engaged in providing habilitation and support services to the ~~person with the developmental disability~~ waiver recipient. Homemaker tasks are strictly for the waiver recipient and for no other members of the household.

(2) and (3) remain the same.

(4) Homemaker services are not available to persons in residential settings in which primary care is funded 24/7 by the DDP.

(5) Homemaker services must be bundled with other services when delivered as a component of self-directed (SD) services and supports and is therefore not available as a discrete service to waiver recipients receiving SD services and supports.

(6) A homemaker must have successfully completed a background check to provide this service when only the waiver recipient is in attendance when the service is provided. In such circumstance, the homemaker will not be reimbursed for services provided when a successful background check has not been completed.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.946 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: INDIVIDUAL GOODS AND SERVICES (1) and (2) remain the same.

(a) memberships and fees; or

(b) recreational activities specific to a rehabilitative goal in the plan of care.

Recreational activities provided under individual goods and services may be covered only when they are included in a planning outcome related to a specific residential rehabilitation goal; or

(b) remains the same but is renumbered (c).

(3) Individual goods and services can be used when the item or service is not covered under any other private or publicly funded resource or other waiver service.

(4) Individual goods and services may pay for:

(a) repair of equipment when the equipment meets the authorization criteria and the repair is a cost-effective alternative;

(b) a maintenance or insurance agreement for items that meet authorization criteria when the maintenance agreement is expected to be cost effective;

(c) shipping and handling cost if the shipping cost is included in the price of the item, and is being purchased using waiver funds pursuant to the plan of care;

(d) reconditioned equipment if all authorization criteria are met and the item is considered of adequate quality, expected to be durable, and the cost is commensurate with the age and condition of the item; or

(e) vitamins and nutritional supplements when there is no other source for reimbursement and only if the waiver recipient's licensed health care provider has prescribed the specific items.

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

(a) exclusively for the benefit of the ~~waiver recipient~~ person; and

(b) the most cost-effective alternative that reasonably meets the assessed need of the waiver recipient person.

(6) Individual goods and services must:

(a) be directed exclusively toward the benefit of the waiver recipient; and

(b) be the least costly alternative that reasonably meets the waiver recipient's assessed need.

~~(4)(7)~~ The service, equipment, or supply must meet ~~the person's medical needs or provide support in order to be independent in daily activities and must meet one of the following criteria:~~

~~(a) remains the same.~~

~~(b) increases the waiver recipient's person's safety in the home environment;~~

or

~~(c) remains the same.~~

~~(5)(8)~~ The cost of the service, equipment, or supply must not compromise the waiver recipient's ~~person's~~ health or safety by depleting their individual cost plan to the extent they cannot receive services that provide for their health and safety.

~~(6)(9)~~ ~~Service, equipment, or supplies which are experimental will not be reimbursed. The following are not reimbursable:~~

(a) services, equipment, or supplies which are experimental;

(b) room and board;

(c) gifts, gift certificates, gift cards, or discretionary cash;

(d) items solely for entertainment or recreational purposes;

(e) personal hygiene items;

(f) general clothing, food, or beverages, except specialized dietary or clothing needs; and

(g) household furnishings, cleaning supplies, and home maintenance.

~~(7) A person or the person's delegate self directing services with employer authority using the financial management service (FMS) option must purchase goods and services in accordance with the requirements set forth by the Developmental Disabilities Program (DDP) and receive reimbursement from the fiscal management service.~~

~~(8)(10)~~ Individual goods and services ~~expected to exceed a \$2,000 projected to exceed \$1,000~~ annual aggregate limit require prior approval by the DDP regional manager.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.960 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PERSONAL EMERGENCY RESPONSE SYSTEM (1) Personal emergency response system (PERS) is an electronic device that enables the person waiver recipient to secure help in an emergency and may include a portable "help" button to allow for mobility. ~~The system is connected to the person's phone and programmed to signal a response center once a help button is activated.~~ The response center is staffed by trained professionals. PERS services may be appropriate for persons who live alone, or who are alone for parts of the day, and have no regular caregiver for periods of time.

(2) PERS service may be delivered via a cellular phone if it is more flexible and cost effective for ensuring the health and safety of the waiver recipient. Cell phones are not for convenience or general-purpose use.

(3) To access the ~~meet~~ cellular phone option guidelines, the waiver recipient person must:

(a) and (b) remain the same.

(4) Cell phone plans must be basic plans and must not include features or applications unrelated to health and safety issues. The cost of cell phone plans and monthly fees is the responsibility of the waiver recipient.

(5) The service coordinator and the team must evaluate the needs of the waiver recipient and look at the most cost-effective options.

~~(5)(6) A usage control feature and insurance may be added to the basic plan. Waiver recipients may elect to add an insurance feature to prevent health and safety concerns should the phone need to be replaced.~~

~~(6) The person must pay any overage fee and any other fees that are not approved in the plan of care.~~

(7) The case manager must review the These cell phone guidelines must be reviewed with the waiver recipient person upon receipt of the phone and at prior to or at the annual planning meeting.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.961 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PERSONAL SUPPORTS (1) Personal supports services assist the person waiver recipient in carrying out daily living tasks and other activities essential for living in the community and provide supervision and monitoring to ensure the person's health and safety. Services may include assistance with homemaking, personal care, general supervision, and community integration.

(2) Personal supports may also provide the necessary assistance and supports to maintain employment in a competitive, customized, or self-employment setting, or to provide supports in day programming to assist the waiver recipient in integrating in community settings.

(3) Personal supports activities are generally defined in the plan of care and are flexible in meeting the changing needs of the waiver recipient. Workers may be assigned activities that involve mentorships and activities designed to develop or maintain skills.

(4) Personal supports workers may be required to provide non-medical transportation to a waiver recipient for activities as outlined in the plan of care, including community integration activities, work or school, and other community activities. A waiver recipient receiving personal supports self-directs this service with employer authority. Other waiver services that may overlap with the activities of the personal support worker are prohibited.

~~(2)(5)~~ Personal supports may assist the waiver recipient person with:

(a) ensuring the waiver recipient's person's health and safety are maintained;

(b) assisting the waiver recipient with hygiene, bathing, eating, dressing, grooming, toileting, transferring, or basic first aid.

- (b) through (h) remain the same but are renumbered (c) through (i).
- (3) and (4) remain the same but are renumbered (6) and (7).

- ~~(a) live-in caregiver;~~
- ~~(b)(a) adult companion companion services;~~
- ~~(c)(b) extended personal care services; and~~
- ~~(d)(c) homemaker services; or~~
- (d) respite.

(8) Personal supports services must not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.963 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PRIVATE DUTY NURSING (1) ~~Nursing services are~~ The practice of nursing is defined in 37-18-102 37-8-102, MCA .

- (2) remains the same.

(3) A waiver recipient ~~person~~ receiving the private duty nursing must be 21 years of age or older.

- (4) remains the same.

(5) Services may include medical management, direct treatment, consultation, and training for the waiver recipient. The training component of this service is available for the caregiver.

(5)(6) Private duty nursing must be provided in the location where the waiver recipient ~~person~~ needs the service.

(7) Private duty nursing must be specified in the plan of care. It must be ordered in writing by the waiver recipient's physician, and it must be delivered by a registered nurse (RN) or a licensed practical nurse (LPN).

(8) Waiver private duty nursing services will be used after the Medicaid state plan home health nursing limits have been reached or if the service required is different from that authorized under the Medicaid state plan.

(9) Private duty nursing services must not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.967 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: PSYCHOLOGICAL AND COUNSELING SERVICES
PSYCHOLOGICAL EVALUATION, COUNSELING, AND CONSULTATION

SERVICES (1) Psychological evaluation, and counseling, and consultation services are those services provided by a licensed psychologist, licensed professional counselor, or a licensed clinical social worker within the scope of the practice of the respective professions.

- (2) remains the same.

(3) Psychological evaluation, and counseling, and consultation services may include:

(a) through (e) remain the same.

(4) Psychological evaluation, and counseling, and consultation services are available to adult waiver recipients when the service is:

(a) through (c) remain the same.

(5) Psychological evaluation, and counseling, and consultation services may be provided when the required ~~nursing~~ services exceed limits the ~~Montana~~ Medicaid state plan or are different from the services available in the ~~Montana~~ Medicaid state plan.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.968 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: REMOTE MONITORING (1) Remote monitoring provides oversight and monitoring within a residential setting through off-site electronic surveillance, while maintaining the health and safety of the waiver recipient person receiving the service.

(2) through (2)(b) remain the same.

(c) radio frequency identification; or

(d) web-based monitoring systems; or

~~(e) other devices approved by the Developmental Disabilities Program (DDP).~~

(3) The waiver recipient person receiving remote monitoring must be 18 years of age or older.

(4) and (5) remain the same.

(6) Live HIPAA-compliant two-way communication may be provided if it is designated in a waiver recipient's person's plan of care.

(7) Cameras are not permitted in bathrooms or bedrooms.

~~(7)(8)~~ (8) The case manager must fully inform the waiver recipient person or their legal representative and each person who resides with the waiver recipient person of what remote monitoring entails and obtain written consent from each person. The case manager must keep the written consent with the waiver recipient's person's plan of care.

(9) Individuals will receive the training needed to successfully utilize the technology, including how to turn off the equipment. This includes training the waiver recipient and staff on the equipment and devices that will be used.

(8) remains the same but is renumbered (10).

(a) reducing or replacing the amount of residential habilitation needed by the waiver recipient person; or

(b) remains the same.

(9) remains the same but is renumbered (11).

~~(10) Service documentation must fully disclose the nature and extent of the services delivered and be signed by the person delivering the service.~~

~~(11) The provider of remote monitoring must disclose the current ratio of monitoring staff to persons receiving remote monitoring to the person's plan of care team during the provider selection process and update the information annually and as changes occur.~~

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.974 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: RESPITE (1) ~~Respite care is relief services designed to allow family members, who regularly care for the person receiving waiver services, to be relieved from their caregiver responsibilities in relation to reducing stress generated by the provision of constant care to the person receiving waiver services.~~ Respite care includes any services designed to meet the safety and daily care needs of the waiver recipient and the needs of the waiver recipient's caregiver in relation to reducing stress generated by the provision of constant care to the waiver recipient.

(2) Respite is only available to waiver recipients residing with primary caregivers in family settings. Respite is available when a primary caregiver is not compensated for providing some or all of the supervision and support needed by the waiver recipients.

(2)(3) Respite providers must be selected and trained by the parents or legal representatives of the waiver recipient person.

(4) Respite providers must comply with all state and federal respite standards.

(5) Respite care must not exceed a period of 24 hours per day for more than 29 consecutive days. The amount and frequency of respite care must be included in each waiver recipient's plan of care.

(3)(6) Respite care may not be provided in:

(a) a licensed children's day care center and in a licensed family and group day care home for children from birth through age 12;

(b) a licensed children's day care center and in a licensed family and group day care home for children age 13 through age 17; and

(c) a licensed adult day center for a person 18 and older.

(4)(7) The waiver will pay the difference in cost between usual and customary rates and the increased rate charged by the provider, as described in (3)(5), to serve a child with extraordinary support needs for children under the age of 13.

(8) Federal financial participation will not be claimed for the cost of room and board except when provided as part of respite care furnished in a facility approved by the state that is not a private residence.

(9) Respite services cannot be used in place of services otherwise available through public education programs, including education activities, after school supervision, daytime services when the school is not in session, or services available to preschool age children.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, MCA

37.34.978 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: RETIREMENT SERVICES (1) Retirement services are available to a waiver recipient person who is age 62 or older; or who is has limited ability to work

due to health and safety issues. Waiver recipients receiving this service are no longer able to maintain employment due to health and safety risks or are of retirement age. Retirement services are structured services consisting of day activities and residential support. Retirement services are furnished in a way which fosters the independence of each waiver recipient person. Retirement services are person-centered and person-directed to the maximum extent possible.

(2) remains the same.

(3) Retirement services must be provided in a residential developmental disability provider-operated residence or community day activity setting.

(4) remains the same.

(a) treat each waiver recipient with dignity and respect;

~~(a)(b)~~ maintain skills and abilities to the maximum extent possible; and

~~(b)(c)~~ keep the ~~person~~ waiver recipient engaged in their environment and community; and

~~(c) provide supervision, safety, and security.~~

(5) Retirement services are designed to:

(a) actively stimulate, encourage, and enable active participation;

(b) develop, maintain, and increase awareness of time, place, weather, persons, and things in the environment;

(c) introduce new leisure pursuits;

(d) establish new relationships;

(e) improve or maintain flexibility, mobility, and strength;

(f) develop and maintain the senses; and

(g) maintain and build on previously learned skills.

(6) Retirement services must be delivered in a provider-operated residence and staff must meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence; provides supervision, safety, and security; and provides activities to keep the waiver recipient engaged in their environment.

(5) remains the same but is renumbered (7).

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.980 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTED EMPLOYMENT, FOLLOW ALONG SUPPORT

(1) Follow along support consists of habilitation services and supports that enable a person waiver recipient, to stabilize or expand employment who is paid at or above the state's minimum wage, to stabilize and maintain employment in a competitive, customized, or self-employment setting with a goal of earning not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(2) The waiver recipient person may require follow along support when:

(a) the waiver recipient's person's job is in jeopardy; or

(b) remains the same.

(3) Follow along support may be provided in an extended ongoing manner or intermittently as needed. Outcomes and actions needed for the waiver recipient to maintain employment must be identified in the plan of care.

- (4) remains the same.
- (a) person-centered employment planning with or on behalf of the waiver recipient;
- (b) development of skills that will make the waiver recipient employable for more hours or for additional duties;
- (b) remains the same but is renumbered (c).
- ~~(c)~~(d) observation and job support to enhance job task skills and monitoring at the work site to ascertain the success of the job placement;
- ~~(d) monitoring at the work site to ascertain the success of the job placement;~~
- ~~(e) job coaching the provision of job coaches to accompany the waiver recipient for short-term job skill training at the work site to help maintain employment;~~
- (f) regular contact and/or follow up with the employer, coworkers, employed person waiver recipient, parents, legal representatives, and others as needed, in order to reinforce and stabilize job placement;
- (g) remains the same.
- (h) individual program development, writing task analysis, monthly reviews, and behavioral intervention programs;
- ~~(h)~~(i) advocating for the waiver recipient person at the employment site for purposes directly related to employment, or with persons not directly affiliated with the employment site such as parents, bus drivers, case managers, school personnel, or landlords if the waiver recipient is hired and currently working;
- ~~(i)~~(j) assistance with financial paperwork and management of financial paperwork related to the waiver recipient's employment and/or Medicaid eligibility; and
- ~~(j)~~(k) assistance with medication administration considered incidental to the follow along support;
- ~~(k) application of behavioral intervention programs, when developed and approved according to the positive behavioral support rule.~~
- (5) The following services are not reimbursable:
- (a) transportation of a waiver recipient to and from the job site;
- (b) any service that is available under the Rehabilitation Act of 1973.
- Documentation is required to ensure that service is not available or is no longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C 1401 et seq.), or EPSDT;
- (c) public relations activities;
- (d) staff continuing education – in service meetings, department meetings, individual staff development;
- (e) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;
- (f) payments that are passed through to the waiver recipient;
- (g) payments for vocational training that is not directly related to a waiver recipient's supported employment program;
- (h) any activities which are not directly related to the waiver recipient's career plan;
- (i) services furnished to a minor waiver recipient by a parent(s), step-parent(s), or legal guardian; and

- (j) services furnished to a waiver recipient by the waiver recipient's spouse.
- (6) Behavioral intervention programs may be applied as a component of follow along support services when the plan is:
 - (a) specifically designed to be implemented in the employment setting by the follow along staff;
 - (b) when developed and approved according to ARM 37.34.1401 through 37.34.1422; and
 - (c) developed by the person who trains the follow along staff to utilize the interventions to reduce the challenging behaviors in the employment setting.
- (5)(7) Follow along support may be provided in conjunction with other employment services. Waiver recipients may utilize the following services: individual and small group employment support, co-worker support, and day supports and activities in conjunction with follow along support.
- (8) A waiver recipient may be considered inappropriately placed if they are unable to sustain competitive, customized, or self-employment. Movement to a better-fit employment setting should be considered, and the waiver recipient may need to be referred or re-referred to vocational rehabilitation.
- (9) Reimbursement for follow along support and vocational rehabilitation services will not be allowed concurrently for the same job placement.
- (10) The department requires all other funding sources be utilized and a denial from other funding sources before this service is authorized for payment by the Developmental Disabilities Program.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.981 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTED EMPLOYMENT, INDIVIDUAL EMPLOYMENT SUPPORTS (1) Individual employment supports are habilitation services and staff supports needed by a person waiver recipient to acquire integrated employment or a job or career advancement in the general workforce at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Individual employment support is delivered in a competitive, customized, or self-employment setting. The outcome of this service is paid employment in a competitive, customized, or self-employment setting within the general workforce that meets the waiver recipient's person's personal and career goals, as documented in the plan of care. Individual employment supports are person-centered to address the waiver recipient's employment needs and interests.

- (2) through (2)(e) remain the same.
- (f) support for career advancement opportunities activities;
- (g) through (k) remain the same.
- (3) Individual employment supports may not include:
 - (a) transportation of a waiver recipient to and from the job site once the waiver recipient has been hired;
 - (b) any service that is otherwise available under the Rehabilitation Act of 1973. Documentation is required to ensure that the service is not available or is no

longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C. 1401 et seq.), or EPSDT;

(c) employment activities taking place in a group, such as work crews or enclaves;

(d) public relations activities;

(e) staff continuing education, including in-service meetings, department meetings, or individual staff development;

(f) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;

(g) payments that are passed through to the waiver recipient;

(h) payments for vocational training that is not directly related to a waiver recipient's supported employment program;

(i) any other activities that are not specific to the waiver recipient, including circumstances when the waiver recipient cannot work their scheduled hours so the job coach is working the job instead of the waiver recipient;

(j) any activities which are not directly related to the waiver recipient's career plan;

(k) services furnished to a minor waiver recipient by a parent, step-parent, or legal guardian; and

(l) services furnished to a waiver recipient by the waiver recipient's spouse.

(4) Individual employment supports will not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

(5) Income from customized home-based businesses need not be commensurate with minimum wage requirements with other employment.

(6) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or

(b) payments that are passed through to the waiver recipient.

(3)(7) Individual employment supports may be provided in conjunction with other employment services. Waiver recipients may utilize small group employment, follow along, co-worker, and day supports and activities in conjunction with individual employment support.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.985 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORT EMPLOYMENT, SMALL GROUP SUPPORT (1) Small group employment support consists of habilitation services and staff supports needed for groups of two to eight ~~workers with disabilities~~ waiver recipients to acquire and maintain a job or position in the general workforce at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Small group employment examples include enclaves, mobile crews, and other business-based workgroups employing small groups of waiver recipients with disabilities in the community.

(2) through (4) remain the same.

(a) person-centered employment planning with or on behalf of the waiver recipient;

(b) through (e) remain the same.

~~(f) support for career advancement opportunities;~~

~~(g)(f) job analysis;~~

~~(h)(g) training, support, coordination, and communication in related skills needed to obtain or retain employment~~ training and support in related skills needed to obtain and retain employment such as using community resources and public transportation;

~~(i)(h) job coaching; and~~

~~(j)(i) benefit planning support;~~

~~(j) job promotion support; and~~

~~(k) career advancement support.~~

(5) The following services are not reimbursable:

(a) transportation of a waiver recipient to and from the job site;

(b) any service that is otherwise available under the Rehabilitation Act of 1973. Documentation is required to ensure that the service is not available or is no longer available under a program funded under section 110 of the Rehabilitation Act of 1973, the IDEA (20 U.S.C 1401 et seq.), or EPSDT;

(c) public relations activities;

(d) staff continuing education, including in-service meetings, department meetings, individual staff development;

(e) incentive payments made to an employer to subsidize the employer's participation in a supported employment program;

(f) payments that are passed through to waiver recipients of supported employment program;

(g) payments for vocational training that is not directly related to a waiver recipient's supported employment program;

(h) any activities which are not directly related to the waiver recipient's career plan;

(i) services furnished to a minor waiver recipient by a parent(s), step-parent(s), or legal guardian; and

(j) services furnished to a waiver recipient by the waiver recipient's spouse.

(6) Total hours for a waiver recipient's attendance shall not include time spent during transportation to or from the waiver recipient's residence.

(7) The department requires all other funding sources be utilized and a denial from other funding sources before this service is entered into the cost plan and approved by the Developmental Disabilities Program.

~~(5)(8) Small group employment support may be provided in conjunction with other employment services.~~ Waiver recipients may utilize individual, co-worker, follow along, and day supports and activities in conjunction with small group employment support.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.986 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORT EMPLOYMENT, COWORKER SUPPORT (1) Coworker support service allows the Developmental Disabilities Program (DDP) and developmental disabilities provider agencies to contract with a business to provide coworker job supports as a part of the natural workplace. This service differs from supported employment, follow along support, in that it creates opportunity for services and supports to be provided by the employee of a local business where the person waiver recipient is employed. Receiving mentoring from a fellow employee increases opportunities for acceptance into and thus success in the workplace community. This service is intended to provide ongoing coworker support allowing follow along support to be decreased.

(2) The purpose of supported employment coworker support is to assist the waiver recipient person to:

(a) through (c) remain the same.

(d) assist the waiver recipient person in becoming a part of the informal culture of the workplace;

(e) provide job skill maintenance or assistance with incorporating new tasks; and

(f) facilitate other supports at the work site; and

(g) assist during breaks and/or lunch.

(3) Waiver recipients participating in this service must be employed by a business and be paid at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

~~(3)(4)~~ Coworker support may be provided in conjunction with other employment services. Waiver recipients using coworker support services may utilize individual and small group employment support, follow along support, and day supports and activities in conjunction with coworker support.

~~(4)(5)~~ The employer is reimbursed a daily rate to offset the cost to the employer for providing the supports which may be needed to maintain the person waiver recipient in the job.

(6) Coworker support and follow-along support cannot be billed for during the same time but could be billed for during the same day.

(7) The activities of this service are over and above the obligations an employer has for an employee without a disability and does not duplicate or supplant those provided under the provisions of the Individuals with Disabilities Education Improvement Act, or Section 110 of the Rehabilitation Act of 1973, or the Americans with Disabilities Acts.

(8) The waiver will not cover activities which are otherwise available under section 110 of Rehabilitation Act of 1973, the IDEA (20 U.S.C. 1401 et seq.), or EPSDT.

(9) The department requires all other funding sources be utilized, and a denial from other funding sources before this service is entered into the cost plan and approved by the Developmental Disabilities Program.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.987 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SUPPORTS BROKERAGE (1) Supports brokerage services assist the waiver recipient ~~person~~ self-directing service with employer authority in arranging, directing, and managing self-directed services as described in the waiver recipient's ~~person's~~ plan of care. The supports broker acts as an agent of the waiver recipient ~~person~~ or legal representative and is available to assist in identifying immediate and long-term needs, developing options to meet those needs, and accessing identified supports and services.

(2) As determined by the scope and nature of the opportunities afforded to the ~~person in~~ waiver recipient ~~services~~, supports brokers may provide information regarding the following:

- (a) remains the same.
- (b) the range and scope of the choices and options the waiver recipient ~~person~~ has;
- (c) through (f) remain the same.
- (g) waiver recipient rights:
- (g) and (h) remain the same but are renumbered (h) and (i).
- (3) The supports broker may assist the waiver recipient ~~person~~ with:
 - (a) defining goals, needs, and preferences and identifying and accessing services, supports, and resources;
 - ~~(b) training the person on the material contained in the self-directed employer handbook;~~
 - ~~(c) day-to-day management of the budget for self-directed services;~~
 - ~~(d) identifying and accessing services, support, and resources;~~
 - (e) remains the same but is renumbered (b).
 - ~~(f) problem solving and conflict resolution;~~
 - (g) and (h) remain the same but are renumbered (c) and (d).
 - (e) recognizing and reporting critical events;
 - ~~(i)(f) exercising independent advocacy, to assist in filing grievances and complaints when necessary; and~~
 - ~~(j) completing required forms; and~~
 - ~~(k) development and maintenance of service documentation.~~
 - (g) other areas related to managing services and supports.
- (4) remains the same.

(5) The annual cap for supports brokerage is the lesser of \$6,000 or 20% of the value of the individual cost plan (ICP). These values may be exceeded for a limited time period in extraordinary circumstances with prior approval of the Developmental Disabilities Program (DDP) ~~director~~.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

37.34.988 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: TRANSPORTATION (1) Transportation services are those services which enable waiver recipients ~~persons served in the waiver~~ to gain access to

waiver and other community services, activities, and resources specified by the plan of care.

(2) Transportation may be offered in addition to medical transportation required under 42 CFR 431.53 and transportation services under the state plan, defined at 42 CFR 440.170(a), and shall not replace them.

(3) Transportation services under the waiver shall be offered in accordance with the plan of care.

(4) Family, neighbors, friends, or community agencies that can provide this service without charge must be utilized when possible.

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

(a) and (b) remain the same.

(c) registration or other costs associated with a waiver recipient's ~~person's~~ dependence on the use of a personal vehicle as outlined in the plan of care.

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

(a) and (b) remain the same.

(c) regularly scheduled upkeep and maintenance of a vehicle with the exception of upkeep and maintenance of any modifications; ~~and~~

(d) ~~escort services;~~ and

(e) transportation may not be reimbursed if bundled within another service.

(5) and (6) remain the same but are renumbered (7) and (8).

(a) transportation services provided to the waiver recipient ~~person~~ are for approved community functions;

(b) and (c) remain the same.

~~(7)(9)~~ A waiver recipient ~~person~~ with employer authority using the FMS option may only be reimbursed for mileage.

(8) remains the same but is renumbered (10).

~~(9)(11)~~ Legal representatives of waiver recipients and other persons who are not employees of agencies with a Developmental Disabilities Program (DDP) contract may be reimbursed for the provision of rides at the mileage rate based on the operational expense of a motor vehicle but such reimbursement shall ~~does~~ not include:

(a) and (b) remain the same.

(c) transportation not directly related to the specific disability needs of a waiver recipient ~~person~~, as outlined in the plan of care.

(10) remains the same but is renumbered (12).

(a) ~~be 18~~ 17 years of age or older;

(b) through (d) remain the same.

AUTH: 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-402, 53-20-205, MCA

4. The department proposes to repeal the following rules:

37.34.947 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: JOB DISCOVERY

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.950 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: JOB PREPARATION

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.951 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: LIVE-IN CAREGIVER

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.973 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
PROGRAM: RESIDENTIAL TRAINING SUPPORT

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

37.34.989 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES
WAIVER PROGRAM: WAIVER-FUNDED CHILDREN'S CASE MANAGEMENT

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services Developmental Disabilities Program is proposing to amend ARM 37.34.911, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.933, 37.34.937, 37.34.941, 37.34.942, 37.34.946, 37.34.960, 37.34.961, 37.34.963, 37.34.967, 37.34.968, 37.34.974, 37.34.978, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, 37.34.988, and to repeal ARM 37.34.947, 37.34.950, 37.34.951, 37.34.973, and 37.34.989.

The purpose of the proposed amendments and repeals is to update the rules to reflect the most recently approved 0208 Waiver. Without these changes, the listed rules will not reflect the Centers for Medicare & Medicaid Services-approved (CMS) waiver services for the State of Montana's Medicaid Program. Below is a list of each rule which the department proposes to amend or repeal and the reasonable necessity for each change.

ARM 37.34.911

The rule lists all the services available under the 0208 Waiver. However, some of the listed services are no longer available and other services have a different name. DDP proposes amending this rule so that it would reflect services offered by the 0208 Waiver.

ARM 37.34.925

The rule uses the term "adaptive equipment," instead of the current term "specialized medical equipment and supplies." Several provisions in the rule, (2)(c) and (2)(d), no longer reflect waiver requirements. Accordingly, DDP proposes to amend this rule to reflect current terminology and practices.

ARM 37.34.926

This rule established requirements for "adult companion" services, which is now known as companion services. Additionally, the current waiver limits this service to functionally impaired members age 14 or older which the rule does not reflect. DDP proposes amending this rule to reflect the terms of the 0208 Waiver.

ARM 37.34.929

This rule currently provides that adult foster may not be provided concurrently with live-in caregiver services. However, live-in caregiver services are no longer covered under the 0208 waiver. Additionally, the current waiver stipulates that adult foster services may not be provided concurrently with companion services, which this rule does not reflect. DDP proposes revisions to this rule to reflect the current 0208 waiver.

ARM 37.34.930

This rule contains requirements for assisted living services which no longer reflects the 0208 waiver. The rule references live-in caregivers, a type of service which is no longer offered under the waiver. In addition, ARM 37.34.930(2) is redundant as it repeats a portion of ARM 37.34.930(1). DDP proposes to amend this rule to reflect the current 0208 waiver and to remove this redundancy.

ARM 37.34.933

This rule currently establishes requirements for behavioral support services which does not reflect the current 0208 waiver. The current waiver delineates between level one and two behavioral support services, which must be provided by professionals who have different professional credentials. DDP proposes amending this rule to outline level one and two services and the professionals allowed to provide each service.

ARM 37.34.937

This rule currently requires that community transition services are furnished only to the extent that they are reasonable and necessary, the person is unable to meet such an expense, or the services cannot be obtained from other sources. However, the currently approved waiver additionally provides that services are furnished only to the extent that they are clearly identified in the service plan. The waiver also indicates which services are reimbursable or excluded from reimbursement which this rule does not reflect. For example, land line fees are reimbursable but not cellular phone set up fees. DDP proposes to amend this rule to reflect the current waiver.

ARM 37.34.941

The rule currently establishes requirements for environmental modifications, but does not include language pertaining to non-allowable modifications, limitations included in the current waiver. DDP proposes amending this rule to address these non-allowable modifications to reflect the scope of the current 0208 waiver.

ARM 37.34.942

The rule provides that coverage for homemaker services is provided under the waiver, subject to certain requirements. However, it does not reflect various limitations set forth in the current 0208 waiver, such as who is allowed to receive and administer services and rules regarding the bundling of services. DDP proposes amending this rule to reflect these limitations in waiver homemaker services.

ARM 37.34.946

This rule provides requirements for coverage for individual goods and services, which do not reflect the current 0208 waiver. The current 0208 waiver allows for recreational goods specific to rehabilitation goals included in the plan of care, services not available through private or publicly funded resource, repair of equipment, maintenance or insurance, shipping and handling costs, reconditioned equipment, and nutritional supplements. The 0208 waiver further requires that individual goods and services must be directed exclusively toward the benefit of the individual and be the least costly alternative. The current 0208 waiver also stipulates non-reimbursable services and pre-approval guidelines which is not reflected in the rule. These requirements are not currently in the rule. Accordingly, DDP proposes to amend this rule to reflect these requirements or limitations.

ARM 37.34.947

This rule established requirements for job discovery services. However, this service is no longer offered under the currently approved Medicaid waiver. Accordingly, DDP proposes to repeal this rule.

ARM 37.34.950

This rule established job preparation service requirements. However, this service is no longer offered by the Medicaid Program under the currently approved waiver. DDP proposes repealing this rule.

ARM 37.34.951

This rule provided rules for live-in caregiver services. However, this service is no longer offered under the currently approved Medicaid Waiver. DDP proposes repealing this rule.

ARM 37.34.960

This rule currently imposes requirements for personal emergency response system coverage, which is not consistent with the current 0208 waiver. The 0208 waiver allows for a member to wear a portable "help" button or, if it is more flexible and cost effective, a cellular phone. There are certain restrictions to cell phones which must be reviewed with the waiver recipient, and insurance is also available should the

phone need to be replaced. DDP proposes to amend this rule to reflect these restrictions and allowances.

ARM 37.34.961

This rule imposes requirements for personal supports which do not reflect the current waiver, which includes certain covered/offered activities and plan of care requirements. The current waiver also precludes personal supports service from being provided concurrently with live-in caregiver or adult companion. However, live-in caregiver is no longer a service offered by the 0208 waiver, and adult companion services are now known as companion services. DDP proposes to amend this rule to reflect the current 0208 waiver.

ARM 37.34.963

This rule provides requirements for private duty nursing services, which do not reflect the 0208 waiver, such as offered services and plan of care requirements. Also, under the waiver, this type of service must be used after other state plan programs have been exhausted and may not overlap or duplicate other waivers or state services. This rule also miscites 37-8-102 as 37-18-102, MCA, in reference to private duty nursing. DDP proposes to amend this rule to reflect the current 0208 waiver and to correct the citation.

ARM 37.34.967

This rule establishes requirements for psychological and counseling services. Under the current waiver, this type of service has been changed to psychological evaluation, counseling, and consultation services, reflecting a broader range of services to be covered under the waiver. DDP proposes to amend this rule to reflect this change in scope of covered services under the current waiver.

ARM 37.34.968

This rule provides requirements for remote monitoring which do not reflect the requirements for coverage of remote monitoring under the current 0208 waiver renewal. DDP would also add language prohibiting cameras in bathrooms and bedrooms as required by CMS, and would require that privacy will be monitored by targeted case managers. Additionally, the waiver imposes staff training and HIPAA compliance requirements. Under the current waiver, remote monitoring cannot be billed while a direct care service is being delivered. DDP proposes amending this rule to be consistent with the changes in the waiver as required by CMS.

ARM 37.34.973

This ARM established requirements for Residential Training Support services, which are no longer covered under the 0208 Waiver. DDP proposes repealing this rule.

ARM 37.34.974

This rule currently imposes requirements for respite services which do not reflect the current 0208 waiver. The 0208 waiver requires that respite providers comply with all state and federal standards and that care not exceed a period of 24 hours per day for more than 29 consecutive days. The waiver also has certain restrictions for

federal financial participation and does not allow the use of services otherwise available through public education programs. DDP proposes to amend this rule to reflect these waiver restrictions on respite services.

ARM 37.34.978

This rule currently imposes requirements or limitations on retirement services, which do not reflect the current 0208 waiver regarding eligible member, program design, and setting requirements. DDP proposes to amend this rule to reflect the waiver.

ARM 37.34.980

This rule imposes certain requirements for supported employment follow along support services. However, such requirements do not reflect the requirements of the current 0208 waiver, such as minimum wage requirements, plan of care requirements, reimbursable activities, non-reimbursable activities, behavioral intervention guidelines, service bundling guidelines, and member qualifications for continued services. DDP proposes to amend this rule to reflect these waiver requirements.

ARM 37.34.981

This rule establishes requirements for supported employment individual employment support, but does not reflect the current 0208 waiver on such issues as minimum wage requirements, program design, non-reimbursable services, overlap restrictions with other services, bundling of service guidelines, and federal financial participation. DDP proposes to amend this rule to reflect the provisions of the current 0208 waiver.

ARM 37.34.985

This rule establishes requirements for supported employment small group support, but does not reflect the current 0208 waiver regarding such issues as minimum wage, reimbursable activities, non-reimbursable activities, transportation restrictions, and the utilization of all other funding sources. DDP proposes to amend this rule to reflect these requirements of the current 0208 waiver.

ARM 37.34.986

This rule establishes requirements for support employment coworker support, but does not reflect the current 0208 waiver regarding such issues as minimum wage, the bundling and billing of services, the Rehabilitation Act of 1973, non-reimbursable services, and the requirement of all other funding sources to be utilized. DDP proposes to amend this rule to reflect these requirements of the current 0208 waiver.

ARM 37.34.987

This rule provides requirements for supports brokerage services which do not reflect the current 0208 waiver on such issues as the duties of support brokers or the information they may provide waiver member. DDP proposes to amend this rule to reflect the requirements of the current 0208 waiver.

ARM 37.34.988

This rule sets forth requirements for coverage of transportation services, but does not reflect the current 0208 waiver on such issues as plan of care requirements, utilization limitations, non-reimbursable services, and age requirements for providers. DDP proposes to amend this rule to reflect the requirements of the current 0208 waiver.

ARM 37.34.989

This rule provides requirements for waiver funded children's case management. However, this service is no longer offered under the currently approved Medicaid waiver. DDP proposes to repeal this rule.

Fiscal Impact

Fiscal impact is accounted for under MAR Notice No. 37-1036. Below were the projected fiscal impact numbers for DD Waiver services for State Fiscal Year 2024:

- \$7,920,990 General Fund increase
- \$14,057,456 Federal Fund increase
- \$21,978,446 Total Funds increase.

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., July 5, 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 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 and repeal 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 May 28, 2024.