

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I and the amendment of ARM) PROPOSED ADOPTION AND
37.82.701 and 37.86.1701 pertaining) AMENDMENT
to Plan First provider billing)

TO: All Concerned Persons

1. On August 16, 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 adoption and 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/81934255032?pwd=SmxXa0FPQkYvaUVra2dwN2FtTVQ2Zz09>, meeting ID: 819 3425 5032, and password: 435057; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 819 3425 5032, and password: 435057. Find your local number: <https://mt-gov.zoom.us/u/kezlAPwDVF>.

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 August 2, 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 proposed to be adopted provides as follows:

NEW RULE I 1115 PLAN FIRST WAIVER (1) "Plan First" refers to Montana's Social Security Act Section 1115 Waiver titled Plan First. This waiver is approved by the Centers for Medicare & Medicaid Services and managed by the Department of Public Health and Human Services (DPHHS) with eligibility determined by the Office of Public Assistance (OPA).

(2) A woman may receive coverage through Plan First if they are not eligible for other Medicaid benefits and:

(a) is a Montana resident;

(b) is aged 19 through 44 years;

(c) is able to become pregnant but is not currently pregnant; and

(d) has a household income up to 211% of the federal poverty level (FPL).

(3) Except as otherwise provided in this rule, the limited Plan First benefits are available to all persons who are members of Plan First under this chapter.

(4) Services covered under Plan First are limited to family planning and family planning-related services.

(5) Plan First is a Medicaid program, and as a condition of participation in Montana Medicaid, all providers must comply with provider participation rules set forth in ARM 37.85.401 and the billing, reimbursement, claims processing, and payment provisions set forth in ARM 37.85.406.

(6) The procedure billing codes specific to Plan First are available at the Medicaid provider website located at <https://medicaidprovider.mt.gov/planfirst>.

(7) The Medicaid Program will not reimburse providers for services rendered to Plan First members for billing codes not listed on the website referred to in (6).

(8) Providers are responsible for confirming Medicaid eligibility and for identifying Plan First members to ensure the provider seeks Medicaid reimbursement for only those services that are covered by Plan First.

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

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

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

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) through (1)(n) remain the same.

(o) Women ages 19 through 44, who have not been otherwise determined eligible for Medicaid under this title, who are able to become pregnant but are not now pregnant, whose household income does not exceed 211% of the federal poverty level. Services are limited to those family planning services defined at ~~ARM 37.86.1701~~ [NEW RULE I] and not covered by third party health coverage. This program is limited to 4,000 women at any given time and is known as Plan First. Plan First will not pay any copay or deductible required by a member's third party health coverage.

(2) and (3) remain 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

37.86.1701 FAMILY PLANNING SERVICES (1) remains the same.

(2) A copy of the family planning procedures ~~and service code table for Plan First~~ may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

(5) Plan First waiver services, which are separate and distinct from family planning services covered by Medicaid, are set forth in [NEW RULE I].

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

IMP: 53-6-101, ~~53-6-144~~, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt NEW RULE I and amend ARM 37.82.701 and 37.86.1701.

Plan First is an 1115 Waiver that provides limited benefits for family planning services to eligible women. The reasonable necessity for the rule proposal is to clearly distinguish Plan First waiver services from the Medicaid program to ensure that providers and Plan First members understand the limited services that are covered by the waiver program. The Plan First waiver is limited to family planning services and procedures that are set forth in the list of procedure codes at <https://medicaidprovider.mt.gov/planfirst>. There are currently no rules that provide specific information or guidance to providers and members about the limited services.

A provider who serves Plan First members is responsible for identifying Plan First members to ensure the provider seeks reimbursement for only those services and procedures that are covered by Plan First. Providers may not bill Plan First members for services not covered by Plan First, unless the provider has followed the requirements set forth in ARM 37.85.406.

NEW RULE I

The proposed new rule includes information regarding eligibility, benefits, and provider billing as none of this currently exist in the rules for the 1115 Plan First waiver. The proposed new rule sets forth current criteria and covered services, as approved by CMS, and does not propose any change in the Plan First Waiver program.

ARM 37.82.701

This rule sets forth the Medicaid eligibility criteria for non-institutionalized families and children. The department proposes to refer to NEW RULE I in the section that explains eligibility criteria for Plan First. The reference to NEW RULE I will replace a reference to ARM 37.86.1701, which did not provide a clear explanation of Plan First services. Referring to NEW RULE I will provide accurate information to providers, Plan First members, and the general public.

ARM 37.86.1701

This rule currently defines the family planning services for standard Medicaid. The department proposes to remove the reference to Plan First in (2) and add new (5), which provides a reference to NEW RULE I. These changes clearly distinguish between family planning services covered by standard Medicaid and the services covered by Plan First. The department proposes to delete the reference to 53-6-141, MCA, as an implementing statute because the statute has been repealed.

Fiscal Impact

This proposed rulemaking would adopt into rule the current practices of the Medicaid Plan First Program under the CMS-approved Section 1115 Waiver. Accordingly, this proposed rule would have an administrative cost of \$0.00 in state fiscal year (SFY) 2024 and \$0.00 in SFY2025. Likewise, the proposed changes would result in a projected cost savings of \$0.00.

There are an estimated 1,642 Plan First members. However, because the proposed rule would merely codify current practice under the Section 1115 Waiver, Plan First members should not experience any changes in benefits or services as a result of this proposed rule.

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., August 23, 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 rules.mt.gov.

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 adoption 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 July 16, 2024.