

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.3005 and 37.86.3607)
pertaining to developmental)
disabilities program provider rates)
update)

TO: All Concerned Persons

1. On June 25, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-949 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 748 of the 2021 Montana Administrative Register, Issue Number 12.

On September 10, 2021, the department published an amendment to MAR Notice No. 37-949 pertaining to a second public hearing on the proposed amendment of the above-stated rules at page 1120 of the 2021 Montana Administrative Register, Issue Number 17.

2. Because differences exist between the original rule amendment as proposed and as here adopted, the department now explains why it amended the original rule as proposed. The Children, Families, Health, and Human Services Interim Committee (committee) objected to portions of MAR Notice No. 37-949 in its entirety because of the allocation and methodology used to apply provider rate increases and direct care recruitment and retention amounts. The department amended the proposed rates included in the Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver for Eligible Individuals Age 16 and Over Manual and the Montana Developmental Disabilities Program Services Manual, adopted by rule, to allocate provider rate increases and direct care recruitment and retention increases per legislative direction. Upon this amendment to the manuals, the committee withdrew its objection.

3. The department has amended the above-stated rules as proposed.

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

COMMENT #1: One commenter asked about the label for the provider rate increase (PRI) in House Bill (HB) 2 indicating a 1%/2% increase in rates, noting the numbers and math show the increase to be 1.5%/2.8%. The commenter asked if the rule change should indicate 1.5% and not approximately 1%.

RESPONSE #1: Based on clarification of HB2, the department amended the developmental disabilities waiver rates to reflect an average weighted provider rate increase of 1.9% for State Fiscal Year (SFY) 2022. Rates are also increased by an additional 0.8% on average with the allocation of \$1,004,294 for direct care recruitment and retention. Total developmental disabilities provider rates are increased by approximately 2.7% for SFY2022.

COMMENT #2: A commenter asked about the rule change indicating a fiscal impact of the PRI as \$1,354,154 yet the allocation in HB2 shows \$3,820,537 as the value of the PRI in the first year of the biennium and asked that the difference in numbers be explained.

RESPONSE #2: The HB2 appropriation for the Disability Services Division includes both the Medicaid developmental disabilities waiver and Children's Mental Health Bureau (CMHB) services. The \$3,820,537 in the Medicaid PRI line of HB2 includes both the developmental disabilities waiver provider rate increase and also the provider rate increases for CMHB services listed in HB2. Based on clarification of HB2, the department amended the developmental disabilities waiver provider rates. This resulted in updating the fiscal increase to \$2,460,636 for PRI and to \$1,004,294 for direct care recruitment and retention which was also allocated through provider rates.

COMMENT #3: Another commenter asked if there is a reason that rates can only be published for a single year of the biennium despite the budget and increase already having been set by the legislature.

RESPONSE #3: The provider rate increase is based on appropriation amounts and the percent increase is not known until caseload expenditures from the prior year are considered. Additionally, the Medicaid developmental disabilities waiver rate increase includes an addition for the direct care recruitment and retention amounts; it will not be known what the set appropriation amount will calculate or translate to as a percentage until the prior year is considered because prior year expenditures are the basis/denominator in rate setting.

COMMENT #4: One commenter asked about the possibility of a breakdown of the rates in the service manual to indicate which portion of the change in rate comes from which allocation line in HB2 and which portion of the rate is allocated from the direct support professional recruitment and retention funding.

RESPONSE #4: Provider rates on a weighted average basis were increased by 1.9% for provider rate increases, and 0.8% for direct care recruitment and retention funding. The allocation of both the provider rate increases and the direct care recruitment and retention funding can be reviewed in the amended notice of MAR Notice No. 37-949.

COMMENT #5: One commenter stated that the rule change discusses the implementation of a FY22 \$1,106,482 allocation for Direct Support Professional

recruitment and retention funding. The commenter asked the department to explain what is meant by a \$.24/hour rate increase, how this was determined, and how the \$.24 added to the rates.

RESPONSE #5: Based on clarification of HB2 and comments during the initial rule process, the implementation of the direct care recruitment and retention was expanded to more services and then implemented similar to the PRI.

COMMENT #6: Another commenter asked if this portion of the funding is intended to be good only for FY22 and the second amount for FY23.

RESPONSE #6: The legislature could choose to adjust appropriation during the next biennium, but the department will include it as part of future caseload projections as an ongoing expenditure. The department will include the funding as an ongoing budget expenditure in caseload projections for the next legislative cycle.

COMMENT #7: The department received a few comments asking how the services were determined to receive this portion of funding. There was specific concern about several of the employment and transportation related services not being included.

RESPONSE #7: Based on clarification of HB2 and comments during the initial rule process, the implementation of the direct care recruitment and retention increase was expanded to more services and implemented similar to the PRI. All services received the direct care recruitment and retention funding except the following:

- Individual Goods and Services
- Remote Monitoring Equipment
- Specialized Medical Equipment and Supplies
- Environmental Modifications
- Personal Emergency Response System
- Community Transition Services

The following services were updated pursuant to their established Medicaid State Plan rate methodologies:

- Private Duty Nursing (Medicaid State Plan) LPN
- Private Duty Nursing (Medicaid State Plan) RN
- Psychological Services
- Physical Therapy (Medicaid State Plan)
- Occupational Therapy (Medicaid State Plan)
- Speech Therapy (Medicaid State Plan)
- Nutritionist Services (Medicaid State Plan)

COMMENT #8: Another commenter asked if this rule, or any future rule, would fund bonuses for workers other than the waiver workers and if so, please explain.

RESPONSE #8: The amendment of ARM 37.34.3005 is limited to developmental disabilities waiver services and providers of those services.

5. The department intends to apply these rules retroactively to July 1, 2021. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 9, 2021.