

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 37.90.409 pertaining to severe) PROPOSED AMENDMENT
and disabling mental illness)

TO: All Concerned Persons

1. On September 30, 2021, at 1:00 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 rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88018392733>; meeting ID: 880 1839 2733; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 880 1839 2733. Find your local number: <https://mt-gov.zoom.us/j/88018392733>.

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 September 16, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

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

37.90.409 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: SEVERE AND DISABLING MENTAL ILLNESS CRITERIA (1) ~~A member has a severe and disabling mental illness if the member~~ To qualify for the SDMI HCBS waiver program, a member must:

(a) be 18 years of age or older;

(b) have a minimum of three areas of high-level impairment indicated by a score of three or higher on the Severe and Disabling Mental Illness, Home and Community-Based Waiver, Evaluation and Level of Impairment form; and

(c) have experienced one of the following in the previous 12 months:

(a) (i) has been involuntarily committed because of a mental disorder to the Montana State Hospital or the Montana Mental Health Nursing Care Center for at least 30 consecutive days in the previous 12 months; or

(ii) diagnosed with one of the diagnoses in (2), excluding mild or not otherwise specified.

~~(b) is 18 years of age or older and:
(i) has a minimum of two areas of high-level impairment as measured by a score of three or higher on the Severe and Disabling Mental Illness, Home and Community Based Waiver, Evaluation and Level of Impairment form; and
(ii) is diagnosed with one of the following diagnoses, excluding mild or not otherwise specified:~~

(2) The following qualify as a severe and disabling mental illness diagnosis:
(A) through (Q) remain the same but are renumbered (a) through (q).
(r) Bipolar II disorder;
(R) through (Y) remain the same but are renumbered (s) through (z).
~~(Z) Panic disorder with agoraphobia;
(AA) Panic disorder without agoraphobia;
(aa) Generalized anxiety disorder; and
(AB) (ab) Borderline personality disorder;_
(AC) Dissociative amnesia disorder;
(AD) Dissociative fugue disorder;
(AE) Dissociative stupor disorder; and
(AF) Dissociative identity disorder.~~

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The department is proposing to amend the qualification criteria and the diagnosis list for the SDMI HCBS waiver program. The department proposes to amend the qualification criteria for the waiver program by requiring three areas of high-level impairment instead of two to reflect the waiver program's purpose of serving individuals needing a higher level of care than individuals served under the Medicaid state plan. Changes to the diagnosis list for the SDMI HCBS waiver program are necessary to make the administrative rule consistent with the approved SDMI, 1915(c) Home and Community Based waiver.

Fiscal Impact

There is no fiscal impact associated with the proposed rule amendments.

The department intends for this proposed rule amendment to be effective retroactive to October 9, 2021.

5. 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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 8, 2021.

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

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

9. 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.

10. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State August 31, 2021.