

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 37.79.304 pertaining to Healthy) PROPOSED AMENDMENT
Montana Kids Evidence of Coverage)

TO: All Concerned Persons

1. On December 29, 2022, at 9:00 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/82033979924?pwd=bzl0R29sNVMrdk5rOUhDOVM1eENldz09>, meeting ID: 820 3397 9924, and password: 049270; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 820 3397 9924, and password: 049270. Find your local number: <https://mt-gov.zoom.us/u/kditMZbAkd>.

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 December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, 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:

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~November 1, 2017~~ January 1, 2023, which is available on the department's web site at www.hmk.mt.gov.

(2) remains the same.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1005, 53-4-1109, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.304.

ARM 37.79.304 adopts the Healthy Montana Kids (HMK) Evidence of Coverage (EOC) document describing the HMK benefit plan. Any changes to the benefit plan require the EOC, the reference to the EOC in the rule, and the effective date of the rule, to be updated.

The proposed changes to the EOC document are as follows:

- Provide for HMK plan coverage of Applied Behavior Analysis (ABA), which the current EOC shows as an excluded service. This update to the EOC will bring the manual in conformity with current practice of covering ABA services, as authorized by legislation passed in 2017. Coverage of ABA was included in the state plan amendment, SPA 18-0021, which was submitted to the Centers for Medicare & Medicaid Services (CMS) in 2018 and approved on November 27, 2019.
- Reflect coverage of habilitation and rehabilitation services to "maintain, improve, or restore" bodily functions for HMK members. HMK has provided this service to members, and this change will bring the manual up to date to reflect current plan coverage.
- Change the contact information for the HMK dental and eyeglass programs to reflect the accurate point of contact.
- Update the administration and prior authorization (PA) authority of Durable Medical Equipment, Prosthetics, Orthotics, and Medical Supplies (DMEPOS) from Blue Cross Blue Shield (BCBS) to Conduent to correctly reflect the entity that processes DMEPOS claims. Also, Conduent is responsible for administration of nutritional services, as it is considered a DMEPOS item.
- Add DMEPOS to Section 5 to identify that the department is responsible for first level appeals relating to DMEPOS services.
- Update the administration of hearing aids and cochlear implants to Conduent to reflect current practice. The update includes identifying that the department is responsible for PA requests for hearing aids, and Conduent is responsible for PA requests for cochlear implants. Additionally, the department is responsible for handling appeals relating to hearing aids. These changes accurately reflect administration duties and PA responsibility.
- Clarify that BCBS is responsible for PA requests for outpatient services for treatment of Severe Emotional Disturbance (SED), and also update the BCBS phone number for that purpose.
- Remove the term "professional call" from the definitions section as it is covered under telehealth.
- Change the term "telemedicine" to "telehealth" to reflect correct terminology.
- Update the reference to the Office of Fair Hearings to reflect the correct title of Office of Administrative Hearings.
- Change DPHHS first and second level appeal length to 30 days for providers and 90 days for members to conform to provisions in the Administrative Rules of Montana.
- Make a variety of grammatical corrections to make the document clearer to readers.

The department has posted a redlined version of the proposed EOC manual with the changes outlined above at <https://dphhs.mt.gov/HMK/>.

Fiscal Impact

Removing the exclusion for Healthy Montana Kids (HMK) Applied Behavioral Analysis (ABA) was estimated in the fiscal note for SB 199 to cost \$746,000 per year and affect 270 HMK members. That amount was added to the budget of Children's Health Insurance Program (CHIP) state plan amendment 18-0021, which was submitted to CMS June 29, 2018, and approved November 27, 2019.

5. The department intends to apply these proposed rule amendments retroactively to January 1, 2023. A retroactive application of the proposed rule amendments 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: Kassie Thompson, 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., January 6, 2023.

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

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, apply and have been fulfilled. The primary bill sponsor was notified by email on October 25, 2022.

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 November 29, 2022.