

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 37.41.101, 37.41.102,)	PROPOSED AMENDMENT AND
37.41.107, 37.41.108, 37.41.109,)	REPEAL
37.41.110, 37.41.116, 37.41.117,)	
37.41.119, 37.41.120, 37.41.121,)	
37.41.122, 37.41.130, 37.41.131,)	
37.41.132, 37.41.202, 37.41.206,)	
37.41.301, 37.41.302, 37.41.306,)	
37.41.308, and 37.41.315 and the)	
repeal of ARM 37.41.118, 37.41.133,)	
and 37.41.207 pertaining to aging)	
services)	

TO: All Concerned Persons

1. On June 13, 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/82566942612?pwd=YXhIL0FBOFhqQ2V3enhPdDRTWIRDdz09>, meeting ID: 825 6694 2612, and password: 191410; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 825 6694 2612, and password: 191410. Find your local number: <https://mt-gov.zoom.us/u/kc2dkjicV5>.

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 May 30, 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 provides as follows, new matter underlined, deleted matter interlined:

37.41.101 PURPOSE (1) ~~The purpose of the aging bureau of the senior long term care division~~ department's State Unit on Aging within the Senior and Long Term Care Division is to develop and administer the state plan; ~~coordinate all activities in the state relating to the purposes of the act; serve as the advocate for all older persons in the state; direct area agencies and service providers in the~~

development of comprehensive and coordinated service delivery systems throughout the state. the State Plan on Aging in accordance with the requirements of the Older Americans Act, Pub. L. No. 89-73 (1965), as amended and codified at 42 U.S.C. § 3001 et seq. The State Plan on Aging encompasses a comprehensive and coordinated service delivery system addressing the needs of older adults in the state.

(2) The State Unit on Aging performs the following functions:

(a) serves as the central authority, coordinating services in the state related to the Older Americans Act, including the coordination and oversight of area agencies and service providers;

(b) acts as the primary advocate for older adults in the state, in an effort to ensure their rights, dignity, and quality of life;

(c) provides guidance and direction to area agencies and service providers in developing and implementing effective and efficient service delivery systems that meet the diverse needs of older adults throughout the state; and

(d) works collaboratively with federal, state, and local partners to ensure the successful implementation and administration of aging services, including the Senior Farmers' Market Nutrition Program and Nutrition Services.

AUTH: 53-5-606 52-3-406, MCA

IMP: 53-5-602 52-3-402, 53-5-604 52-3-404, MCA

37.41.102 DEFINITIONS For purposes of this subchapter, In addition to the definitions contained in 52-3-401, MCA, the following definitions apply to this subchapter:

(1) "Act" means the Older Americans Act of 1965, as amended.

(2)(1) "Administration on aging" "Administration for Community Living/Administration on Aging" means the agency established in the office of the secretary, department of health and human services within the U.S. Department of Health and Human Services, as part of the office of human development services which that is responsible for administering the provisions of the act Older Americans Act and whose address is North Building, 330 Independence Avenue, Southwest, Washington, D.C. 20201.

(3) "Federal department" means the department of health and human services.

(4) "Department" means the department of public health and human services.

(5) "Division" means the senior long term care division of the department of public health and human services.

(6) "Commissioner" means the commissioner on aging of the administration on aging.

(7)(2) "Area agency" means the agency designated by the division department in a planning and service area to develop and administer an area plan for a comprehensive and coordinated system of services for older persons adults.

(8)(4) "Community focal point" means a place or mobile unit in a community or neighborhood designated by an area agency for the collocation and coordination of services to older persons adults.

~~(9)(5) "Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area. system for providing necessary supportive services, including nutrition services, in a manner designed to:~~

~~(a) facilitate accessibility to, and utilization of, supportive and nutrition services provided within the geographic area served by such system by any public or private agency or organization;~~

~~(b) develop and make the most efficient use of supportive and nutrition services in meeting the needs of older adults;~~

~~(c) use available resources efficiently and without duplication; and~~

~~(d) encourage and support public and private entities in assisting older adults to meet their service needs on a voluntary basis.~~

~~(10) "Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.~~

~~(11) "Indian tribe" means any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the federal government to Indians because of their status as Indians.~~

~~(12) "Manual" means the state manual of policy and procedures for operations of programs under the Older Americans Act for the division.~~

~~(13) "Multipurpose senior center" means a community or neighborhood facility for the organization and provision of facilities for recreational and group activities for older persons and services including, but not limited to, health, social, nutritional, and educational services.~~

~~(14) "Planning and service area" means the geographic area served by an area agency.~~

~~(15) "Nonprofit organization" means a corporation organized under Title 35, chapter 2, MCA, in which no part of its income or profit is distributable to its members, directors, or officers.~~

~~(16)(7) "Older person adult" means any person 60 years old or older of age or older.~~

~~(17)(8) "Service provider" means an individual, agency, or organization awarded a subgrant or contract from the division-department or an area agency to provide services under the state plan or an area plan.~~

~~(18) "Federal fiscal year" means the period beginning October 1 of one year and ending September 30 of the next year.~~

~~(19) "State fiscal year" means the period beginning July 1 of one year and ending June 30 of the next year.~~

~~(20) "State plan" means the document submitted by the division to the administration on aging in order to receive grants from the state's allotments under the act.~~

~~(21) "Units of general purpose local government" include, but are not limited to, counties and incorporated cities and towns and other government units as may be established by law pursuant to Title 7, chapters 1, 2, and 3, MCA.~~

~~(22)(3)~~ "Area plan" means the document submitted by an area agency to the ~~division~~ department in order to receive subgrants or contracts from ~~the division's grants funds allocated~~ under the act Older Americans Act.

~~(23)(9)~~ "Supportive services" means:

~~(a)~~ ~~access~~ services such as:

~~(i)(a)~~ transporting older ~~persons~~ adults to and from community facilities and resources;

~~(ii)(b)~~ escorting older ~~persons~~ adults unable to use conventional means of transportation;

~~(iii)(c)~~ outreach to identify hard-to-reach older ~~persons~~ adults and assist them in obtaining services; and

~~(iv)(d)~~ informing older ~~persons~~ adults of the opportunities and services available and referring them to the proper service provider;

~~(b)(e)~~ community services ~~such as~~ including education, information and referral, health, legal, advocacy, program development, counseling, health screening, residential repair and renovation, recreation ~~and alteration, renovation,~~ and acquisition ~~and construction~~ of multipurpose senior centers;

~~(e)(f)~~ home services such as home health, homemaker, and home chore; and

~~(d)(g)~~ services in care-providing facilities such as placement, counseling, complaint, and grievance resolution.

~~(24)(6)~~ "Nutrition services" means congregate and home-delivered meals, nutrition education, ~~and shopping assistance~~ nutrition counseling.

~~(25)~~ "Entity" means an individual, person or organization.

~~(26)~~ "MCA" means ~~the Montana Code Annotated~~.

~~(27)~~ "District" means ~~one of the multi-county districts established by Executive Order 2-71 and Executive Order 7-73~~.

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-604~~ 52-3-401, MCA

37.41.107 DESIGNATION OF PLANNING AND SERVICE AREAS (1) The ~~division~~ department may designate as a planning and service area:

~~(a)~~ any unit of general-purpose local government; or

~~(b)~~ any district or combination of districts; ~~or~~

~~(c)~~ any Indian reservation.

(2) ~~The designation department shall designate and fix the number of planning and service areas by the division will be governed by the following criteria:~~ in accordance with applicable federal and state law, including 52-3-405, MCA.

~~(a)~~ ~~Planning and service areas will be designated every 4 years beginning October 1, 1987.~~

~~(b)~~ ~~There will be no more than 12 planning and service areas designated in each 4 year period.~~

~~(c)~~ ~~There will be no less than 7 planning and service areas designated in each 4 year period.~~

~~(d)~~ ~~The 11 or 12 planning and service areas that were designated prior to October 1, 1983 will continue to be designated as planning and service areas until October 1, 1987.~~

~~(e) The division will accept requests from planning and service areas that the area will be divided into two new planning and service areas.~~

~~(f) Before October 1, 1983, only one request will be approved by the division creating two planning and service areas out of one.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-603, 53-5-605,~~ 52-3-405, MCA

37.41.108 DESIGNATION OF AREA AGENCIES (1) ~~The division may designate as an area agency in a planning and service area an entity which demonstrates its ability to~~ In accordance with applicable provisions of section 305 of the Older Americans Act, 42 U.S.C. § 3025, the department may designate an entity as an area agency in a planning and service area after considering the following factors:

~~(a) develop and administer an area plan for a comprehensive and coordinated system of services; and~~ geographical distribution of older adults in Montana;

~~(b) serve as the advocate and focal point for older persons in the planning and service area.~~ incidence of need for supportive services, nutrition services, multipurpose senior centers, and legal assistance;

~~(c) distribution of older adults residing in such areas who have the greatest social or economic need, with particular attention to low-income older adults, including older low-income minority adults, older adults with limited English proficiency, and older adults residing in rural areas;~~

~~(d) distribution of Native American elders residing in such areas;~~

~~(e) distribution of resources available to provide such services or centers;~~

~~(f) boundaries of existing areas within the state drawn for the planning or administration of supportive-services programs; and~~

~~(g) location of units of general-purpose local government.~~

~~(2) Entity includes but is not limited to:~~

~~(a) an established office on aging which operates within the planning and service area;~~

~~(b) any office or agency of a unit of general purpose local government;~~

~~(c) any combination of offices or units of general purpose local governments;~~

~~or~~

~~(d) any other public or private nonprofit agency, except any regional or local agency of the state.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.109 DIVISION DEPARTMENT AGING SERVICES HEARING PROCEDURES (1) A designated area agency is entitled to a hearing if it is aggrieved by an adverse action of the department ~~determination which:~~

~~(a) disapproves~~ disapproving a plan or plan amendment submitted by the agency;

(b) ~~disapproves~~ disapproving an area plan for failure to comply substantially non-compliance with the requirements of the act or manual Older Americans Act; or

(c) ~~withdraws~~ withdrawing the agency's designation.

(2) A unit of general-purpose local government, district, or combination of districts is entitled to a hearing if it is aggrieved by ~~an adverse~~ a department action denying designation as a planning and service area.

(3) ~~The hearing will be conducted according to the applicable provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. Hearings will be conducted in accordance with ARM 37.5.117.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.110 FUNCTIONS OF AREA AGENCY (1) Pursuant to the applicable provisions of section 306 of the Older Americans Act, 42 U.S.C. § 3026, each designated ~~An~~ area agency shall:

~~(1)(a)~~ (1)(a) develop and administer ~~an~~ a four-year area plan for a comprehensive and coordinated delivery system ~~in~~ within a planning and service area;

~~(2)(b)~~ (2)(b) assess the ~~kinds and levels of services needed by older persons in the planning and service area~~ agency's incidence of need for supportive services, nutrition services, multipurpose senior centers, and legal assistance for older adults with the greatest social and/or economic need in the area, with particular attention to those who are low-income, including minority individuals, those with limited English proficiency, and those residing in rural areas;

~~(3)(c)~~ (3)(c) enter into subgrants or contracts to provide all services under the area plan, except as provided under ARM 37.41.121;

~~(4)(d)~~ (4)(d) ~~provide technical assistance, monitor, and quarterly evaluate the performance of all service providers under the plan; monitor and conduct quarterly performance evaluations of all service providers under the plan, and provide them with technical assistance as needed;~~

~~(5)(e)~~ (5)(e) coordinate the administration of its plan with other federal, state, and local resources;

~~(6)(f)~~ (6)(f) establish an advisory council ~~as required by~~ pursuant to ARM 37.41.116;

~~(7)~~ (7) ~~assure that older persons in the planning and service area have access to information and referral services;~~

~~(8)~~ (8) ~~divide the entire planning and service area into community service areas and designate community focal points;~~

~~(9)~~ (9) ~~provide outreach efforts to identify older persons and inform them of the availability of services under the plan; and~~

(g) conduct targeted outreach efforts to identify and inform older adults about services available under the area plan;

(h) ensure that older adults in the planning and service area have access to information and referral services available under the area plan;

(i) divide the entire planning and service area into community service areas, and designate community focal points; and

(40)(j) develop and publish a manual of methods it uses used to establish priorities for services, and provide a copy of the manual to each service provider in the planning and service area.

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.116 AREA AGENCY ADVISORY COUNCIL (1) ~~An area agency shall establish an advisory council to advise the agency in:~~ Pursuant to applicable provisions of section 306 of the Older Americans Act, 42 U.S.C. § 3026, each area agency shall establish an advisory council to provide guidance and advice to the agency in the following areas:

(a) ~~development and administration of the area plan; developing and administering the area plan and operations conducted under the plan;~~

(b) ~~conducting public hearings; or focus groups when needed, to gather input on aging services from older adults and community members;~~

(c) ~~representing the interests of older persons~~ adults in the planning and service area; and

(d) ~~reviewing and commenting~~ providing comment on all community policies and programs which affect older persons. affecting older adults.

(2) ~~The composition of the advisory council shall be made up of:~~ meet the requirements of 45 CFR § 1321.63(b). The department adopts and incorporates by reference 45 CFR § 1321.63(b), as amended February 14, 2023, which sets forth the composition requirements for advisory councils under the Older Americans Act. A copy of this regulation may be obtained at <https://www.ecfr.gov/> or by contacting the Department of Public Health and Human Service, Senior and Long Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(a) ~~interested citizens, more than 50 percent of whom are older persons; and~~

(b) ~~local elected officials.~~

(3) ~~The agency may use the advisory council to advise it in carrying out any of its functions.~~ The advisory council shall meet, at a minimum, twice each year.

(4) ~~The area agency shall provide staff and assistance to the advisory council.~~ To promote transparency and community involvement, the area agency shall provide public notice of advisory council meetings at least three days prior to the meeting date. Notices shall be posted at local senior centers or congregate meal sites within the planning and service area.

(5) The area agency shall provide necessary staff and assistance to support the advisory council in fulfilling its responsibilities effectively.

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.117 AREA PLAN CONTENT (1) An area plan shall ~~provide for a comprehensive and coordinated delivery system.;~~

(a) demonstrate how the area agency will meet functions required by ARM 37.41.110; and

(b) provide the services set forth in ARM 37.41.121.

~~(2) An area plan shall demonstrate how the area agency will meet functions required by ARM 37.41.110. Area agency plans must meet the applicable requirements of section 306 of the Older Americans Act, 42 U.S.C. § 3026.~~

~~(3) An area plan shall provide that: The area agency shall:~~

~~(a) services are provided as provided in ARM 37.41.120; hold a public hearing or focus group meetings on the area plan and any amendments proposed to the area plan;~~

~~(b) any existing state and local licensure requirements for the provision of services are met. provide at least 14-days' notice to older adults, public officials, and other interested parties of the times, dates, and locations of the public hearings or focus group meetings; and~~

~~(c) submit the area plan and amendments to the area advisory council for review and comment and to the department for approval.~~

~~(4) An area plan shall provide that an adequate amount of the area agency's allotment for supportive services shall be spent for access services, in-home services, and legal services, excluding amounts for administration.~~

~~(5) An area plan shall specify:~~

~~(a) program objectives to implement all requirements regarding delivery of services;~~

~~(b) objectives established by the division;~~

~~(c) a resource allocation plan indicating the proposed use of all funds directly administered by the area agency;~~

~~(d) an inventory of programs operated by other agencies in the planning and service area for services to older persons;~~

~~(e) a description of community services areas and an identification of community focal points; and~~

~~(f) methods the area agency uses to set services priorities.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

~~37.41.119 AREA PLAN, APPROVAL/DISAPPROVAL (1) The division shall approve an area plan or amendments which meet the requirements of the act. The department will approve an area plan and amendments meeting the requirements of this subchapter and the Older Americans Act.~~

~~(2) The division shall The department will follow the procedures in ARM 37.41.109 to terminate an area plan or area agency designation if the division department finds:~~

~~(a) finds that an area plan is unapprovable an area plan has not been timely submitted;~~

~~(b) proposes to terminate the designation of an area agency; or an area plan is not approved; or~~

~~(c) finds that the provisions or administration or provisions of an approved area plan no longer substantially comply with the requirements of the act Older Americans Act.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: 53-5-602 52-3-402, 53-5-604 52-3-404, MCA

37.41.120 AREA PLAN, AMENDMENT/DEVELOPMENT (1) An area agency shall: ~~(1)~~ amend the area plan if:

(a) ~~a newly enacted or amended state or federal statute or regulation law requires necessitates revision in order to comply with the law a new provision or conflicts with any existing plan provision; or~~

(b) local law, organization, policy, or agency operations changes and is are no longer accurately reflected in the area plan; ;

~~(c) the area agency proposes to add, change, or delete any area plan provisions; or,~~

~~(d) the division requires further annual amendments;~~

~~(2) receive subgrants or contracts only under an approved area plan; and~~

~~(3)~~(2) The area agency may use its Older Americans Act-funded subgrants ~~or and~~ contracts only for activities under an the approved area plan.

AUTH: 53-5-606 52-3-406, MCA

IMP: 53-5-602 52-3-402, 53-5-604 52-3-404, MCA

37.41.121 DIRECT PROVISION OF SERVICES BY AN AREA AGENCY

(1) The area agency shall primarily use subgrants or contracts with service providers to provide all services under the ~~act~~ Older Americans Act unless the ~~division decides that~~ department determines the area agency's direct provision of a service ~~by the area agency is necessary to ensure assure an adequate supply of the service, or no other agency is able or available to provide the service.~~

(2) The area agency may directly provide information and referral, outreach, advocacy, program development, coordination, individual needs assessment, and case management services if the ~~division decides that~~ department determines the area agency can perform the services more effectively and efficiently than any other agency in the planning and service area.

~~(3) For all other services funded under the act, the division may allow the area agency to directly provide services in the planning and service area if no other agency can and will provide the service.~~

~~(4)~~(3) The area agency may plan, coordinate, and provide services funded under other programs if:

(a) it does not use funds under the ~~act~~ Older Americans Act for those services; and

(b) it continues to meet all its area agency responsibilities.

AUTH: 53-5-606 52-3-406, MCA

IMP: 53-5-602 52-3-402, 53-5-604 52-3-404, MCA

37.41.122 WITHHOLDING OF AREA AGENCY, FUNDS TERMINATION

(1) ~~The division shall~~ department may withhold ~~furthor~~ payments to an area agency ~~when the division, after notice and opportunity for a hearing required in ARM 37.41.109, finds that~~ if it finds the area agency has failed to:

(a) substantially comply with federal or state law;

- (b) submit required reports with the department; or
- (c) follow policy or procedures in a manner that results in decreased services.
- ~~(1) the area agency does not meet the requirements of the act;~~
- ~~(2) the area plan or plan amendment is not approvable; or, Prior to making a final determination to withhold funds, the department will provide the agency with:~~
 - (a) written notice of the action to withhold funds;
 - (b) documentation of the need for such action; and
 - (c) the opportunity for a public hearing on the action.
- ~~(3) there is failure in the provisions or administration of an approved area plan to comply with any provision of the act.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.130 SERVICE CONTINUATION BY DIVISION DEPARTMENT (1) If the ~~division terminates~~ department withholds funding under ARM 37.41.122, it shall: notify the area agency and the Administration for Community Living/Administration on Aging about the action to withhold funds.

- ~~(a) notify the administration on aging;~~
- ~~(b) provide a plan for the continuity of services in the planning and service area; and~~
- ~~(c) designate a new area agency in the planning and service area.~~
- ~~(2) The division may, for a period up to 180 days after its final notice to withdraw designation of an area agency: The department may use the withheld funds to directly administer services within the service area served by the area agency for a period not to exceed 180 days. If the department determines the area agency has not taken corrective action, or if the department does not approve of the corrective action, the department may extend the time period to directly administer services by up to 90 days.~~
 - ~~(a) perform the responsibilities of the area agency; and~~
 - ~~(b) assign the responsibilities of the area agency to another agency in the planning and service area.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.131 CONTRIBUTIONS FOR SERVICES (1) The area agency shall require each service provider under the area plan to:

- ~~(a) give each older person who receives a service information about the cost of the service; give information about the cost of services to each older adult receiving services;~~
- ~~(b) give each older person adult an opportunity to contribute to part or all of the cost of the service;~~
- ~~(c) inform each older person adult that he they may decide freely whether and how much to contribute to the cost of the service or not to contribute and how much;~~

(d) protect the privacy and confidentiality of each older person adult with respect to his the contribution or non-contribution;

(e) have appropriate procedures to safeguard and account for all contributions;

(f) use all contributions to expand the services ~~of the provider under the act for which payment was given; and~~

(g) use all contributions for nutrition services to increase the number of meals served.;

(h) not consider assets, savings, or other property owned by an older adult in determining whether cost-sharing is permitted;

(i) not deny any service for older adults based on their income or failure to make a cost-sharing payment when allowed, when funds are received under the Older Americans Act;

(j) determine eligibility of older adults to cost-share solely based on a confidential declaration of income, without requiring verification; and

(k) distribute written materials created by the department.

(2) ~~The area agency shall permit each service provider to develop a contribution schedule for services based on:~~ The area agency may not allow any service provider to invoice for voluntary contributions.

~~(a) the income ranges of older persons in the community; and~~

~~(b) the provider's other sources of income.~~

~~(3) The area agency may not allow any service provider to deny an older person a service because the older person would not contribute for the service.~~

AUTH: ~~53-5-606~~ 52-3-406, MCA

IMP: ~~53-5-602~~ 52-3-402, ~~53-5-604~~ 52-3-404, MCA

37.41.132 PROVISION OF CONGREGATE NUTRITION SERVICES (1) An area agency may award nutrition services funds only to a nutrition services provider which that:

(a) remains the same.

(b) provides home-delivered nutrition services directly or by contract;

(c) and (d) remain the same.

(2) An area agency shall award funds to a nutrition services provider which that has carried out its nutrition services activities with demonstrated effectiveness.

AUTH: ~~53-2-205, 53-5-205~~ 52-3-406, MCA

IMP: ~~53-2-205, 53-5-203~~ 52-3-101, 52-3-504, MCA

37.41.202 SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): DEFINITIONS ~~Unless otherwise indicated, In addition to the definitions contained in 52-3-502, MCA, the following definitions apply throughout to this chapter subchapter:~~

(1) "Adverse action" means an action taken by of the department ~~in the administration of the SFMNP having a negative impact on a farmer, participant, or local agency that has an agreement.;~~

(a) denying an application or agreement;

(b) terminating an agreement or application for failure to comply with program requirements; or

(c) imposing corrective action.

(2) remains the same.

(3) "Application" means a written request submitted on a form provided by the department or local agencies indicating interest in participating in SFMNP ~~either as a senior as defined in (14) or a farmer as defined in (9).~~

(4) and (5) remain the same.

~~(6) "Department" means the department of Public Health and Human Services, Aging Services Bureau.~~

(7) through (14) remain the same but are renumbered (6) through (3).

~~(15)~~(14) "Senior Farmers' Market Nutrition Program (SFMNP)" means the Senior Farmers' Market Nutrition Program authorized by 7 U.S.C. § 3007, and regulations in provided in 7 CFR Part 249.

~~(16) ""SFMNP state plan" means the annual state plan for SFMNP that describes the manner in which the department intends to implement all aspects of program administration within its jurisdiction in accordance with 7 CFR 249.~~

(17) remains the same but is renumbered (15).

~~(18)~~(16) "Violation" means an activity that is prohibited by participant, farmer, or local agency SFMNP agreement ~~and~~, 7 CFR Part 249, or this subchapter.

AUTH: 52-1-103, 52-3-504, MCA

IMP: 52-3-102, 52-3-505, MCA

37.41.206 SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FARMER ELIGIBILITY, AND PARTICIPATION, AND VIOLATIONS

(1) through (3) remain the same.

(4) An authorized farmer must comply with SFMNP requirements contained in the terms and conditions of the farmer agreement and in applicable provisions of 7 CFR § 249.10.

(5) A farmer is in violation of the SFMNP if the farmer fails to:

(a) comply with the SFMNP and terms and conditions of the farmer agreement; or

(b) participate in the initial and annual training on SFMNP provided by the department.

AUTH: 52-1-103, 52-3-504, MCA

IMP: 52-3-102, 52-3-505, MCA

37.41.301 NUTRITION SERVICES, ELIGIBILITY (1) Eligibility for congregate Congregate nutrition services will be determined as follows: may be made available to:

~~(a) a person will be considered for eligibility if a member of one of the following categories:~~

~~(i)(a) a person aged 60 years or older an older adult;~~

~~(ii)(b) the spouse of an older adult person 60 years of age or older regardless of that spouse's age;~~

~~(iii)(c) a handicapped or disabled non-elderly person residing in a housing facility occupied primarily by elderly persons and at which congregate nutrition services are provided~~ persons with disabilities who live in housing facilities in which mainly older adults live and which also provide congregate nutrition services; ~~or and~~
~~(iv)(d) a person~~ persons providing volunteer services to a congregate nutrition service provider during meal hours.

~~(b)(2) a nutrition~~ Nutrition provider, providers must determine eligibility for nutrition services in accordance with the criteria in ~~(a) (1)~~ (1) and standard written procedures ~~adopted by the provider to govern enrollment in the services, will determine who will be recipients of that provider's services~~ has adopted.

AUTH: 53-2-201, ~~53-6-402,~~ MCA
IMP: 52-3-504, 53-2-201, ~~53-6-402,~~ MCA

37.41.302 NUTRITION SERVICES, DEFINITIONS In addition to the definitions contained in 52-3-502, MCA, the following definitions apply to this subchapter:

~~(1) "Congregate meals" means those meals served in a group setting at a selected site that has the seating and dining furniture necessary for service of meals family style, restaurant style or cafeteria style.~~

~~(2)(1) "Home-delivered meals" means those meals transported from a preparation site to persons in their residences and~~ includes ~~is inclusive of those programs commonly known as Meals on Wheels.~~

~~(3)(2) "Nutrition service provider" means a non-profit corporation or public agency providing, on a regular basis, congregate or home-delivered meals to elderly or other adult persons who, due to age, handicaps or disabilities, etc., are unable to provide themselves with regular meals.~~

(3) "Older adult" means any person 60 years of age or older.

AUTH: 53-2-201, ~~53-6-402,~~ MCA
IMP: 52-3-504, 53-2-201, ~~53-6-402,~~ MCA

37.41.306 NUTRITION SERVICES, FOOD REQUIREMENTS (1) The nutrition service provider shall ensure that:

(a) the use of procedures are used which that preserve nutritional value and food safety in the purchase and preparation of food and delivery of meals;

(b) the use of appropriate food containers and necessary utensils are used for blind and handicapped persons individuals who are blind or who have a disability;

~~(c) no food prepared or canned in the home way may be used in meals provided by providers. Only commercially processed, canned food may be used~~ providers only offer commercially processed, canned food that has not been prepared or canned in a home;

(d) hot transported food be at 140° F or above from time of final food preparation to completion of servicing delivery;

(e) cold food be maintained at ~~45~~ 40° F or below from time of initial service to completion of delivery service; and

(f) all food transported to sites is considered "leftover"; except unopened pre-packaged food, and food remaining at the meal site or main food preparation center ~~be~~ is thrown away.

(2) Vitamins ~~and/or~~ mineral supplements shall not be provided by the nutrition service provider.

(3) Each meal served by the service provider shall contain at least one-third of the current recommended dietary allowance as established by the ~~food and nutrition board of the national academy of sciences, national research council~~ Food and Nutrition Board of the National Academies of Sciences, Engineering, and Medicine.

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

IMP: 52-3-504, 53-2-201, ~~53-6-402~~ MCA

37.41.308 CONGREGATE NUTRITION SERVICES, PROVIDER REQUIREMENTS (1) The nutrition service provider shall ~~provide~~:

(a) provide a hot or other appropriate meal in a congregate setting at least once a day, ~~5~~ five or more days a week, except in a rural area where such frequency is not feasible and is approved by the department;

(b) provide services as close as possible in physical proximity to the majority of eligible older persons adults within the service area;

(c) give preference to community facilities when locating a congregate site;

(d) ~~to provide supervision of all staff working in the preparation of food,~~ supervision by a person who will ensure the application of ensuring adherence to proper hygiene techniques and practices in food handling preparation and service;

(e) provide training by qualified personnel in sanitation, food preparation, and portion control for all paid and volunteer staff who prepare, handle, and serve food;

(f) ~~at least semi-annual review of the menus used and when the menus are completely changed by a registered dietician, to assure that compliance with ARM 37.41.306(3) is met. It is recommended that a cycle menu be used to assure such compliance;~~ conduct menu reviews at least semi-annually, ensuring compliance with ARM 37.47.306(3) when a registered dietician changes the menus;

(g) ~~that development and analysis of menus be the responsibility of a~~ use a qualified dietician/ or nutritionist to conduct menu analyses; and

(h) ~~that maintain menus and menu analyses be maintained for audit purposes on file for 3 years~~ for three years for auditing purposes;

(i) provide nutrition education and other nutrition services, as appropriate, based on the needs of meal recipients;

(j) plan meal availability for older adults during weather-related emergencies and natural disasters, including public health emergencies; and

(k) conduct an annual intake and nutrition risk assessment of each participant.

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

IMP: 52-3-504, 53-2-201, ~~53-6-402~~ MCA

37.41.315 HOME-DELIVERED NUTRITION SERVICES, PROVIDER REQUIREMENTS (1) ~~Nutrition~~ Pursuant to section 336 of the Older Americans Act, 42 U.S.C. § 3030f, nutrition service providers who provide home-delivered meals shall:

(a) ~~provide for home delivered meals at least once a day, 5 or more days a week; provide, on five or more days a week, except in a rural area where such frequency is not feasible and the department approves less frequency, at least one home-delivered meal, which may consist of hot, cold, frozen, dried, canned, or fresh foods, and, as appropriate, supplemental foods and any additional meals the provider elects to deliver;~~

(b) remains the same.

(c) ~~with the consent of the older person, or his representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person or the household in imminent danger; provide nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal recipients;~~

(d) ~~where feasible and appropriate, make arrangements for the availability of meals to older persons in weather-related emergencies; and notify appropriate officials for follow-up on any conditions or circumstances placing the older adult or the household in imminent danger;~~

(e) ~~make at least an annual written evaluation of each recipient in order to re-evaluate the need for the continuation of home delivered meals. plan for availability of meals to older adults during weather-related emergencies and natural disasters, including public health emergencies; and~~

(f) complete at least annually an intake application for each recipient for re-evaluating the need to continue home-delivered meals.

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

IMP: 52-3-504, 53-2-201, ~~53-6-402~~, MCA

4. The department proposes to repeal the following rules:

37.41.118 AREA PLAN REVIEW

AUTH: 53-5-606, MCA

IMP: 53-5-602, 53-5-604, MCA

37.41.133 FOOD DISTRIBUTION RATIOS

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

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

37.41.207 SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP): FARMER PARTICIPATION REQUIREMENTS AND VIOLATIONS

AUTH: 52-1-103, 52-3-504, MCA

IMP: 52-3-102, 52-3-505, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes this rulemaking to update, consolidate, simplify, and make more user friendly the administrative rules governing aging services. Many of these rules have not been updated since 1987.

The department has reviewed and applied the regulatory reform initiative criteria to the rules by assessing if each rule serves a legitimate purpose, is not redundant, creates the lowest burden possible to meet the identified need, and is clear in language and intent.

The department is also proposing rule amendments to align with the requirements of Senate Bill (SB) 45, which was passed and enacted into law during the 2023 Montana Legislative Session. SB 45 revised laws related to aging services by updating criteria for the designation of planning and service areas and modernizing terminology used within the aging services statutes.

Technical, stylistic, and nonsubstantive updates are also proposed to make the rules clearer and more user friendly.

ARM 37.41.101

The department proposes to amend this rule so that the current functions of the State Unit on Aging are more clearly specified within rule. The proposed amendments are necessary to ensure the rule aligns with the current functions of the State Unit on Aging.

ARM 37.41.102

The department proposes to amend this rule to clarify the meaning of terms used throughout the area agency rules and to provide for a better understanding of these rules. Definitions of terms defined in statute have been removed from this rule. The department has also updated the rule to use terminology that is consistent with current law.

ARM 37.41.107

The department proposes to amend this rule to remove outdated language and to update the rule to align with enactment of SB 45.

ARM 37.41.108

The department proposes to amend this rule to remove outdated language and more clearly specify the criteria governing the designation of area agencies.

ARM 37.41.109

The department proposes to amend this rule to clarify the procedures governing aging services hearings in cases in which a designated area agency is aggrieved by

certain adverse actions of the department. The proposed changes align with requirements of the Older Americans Act, codified at 42 U.S.C. 3001 et seq.

ARM 37.41.110

The department proposes to amend this rule to remove outdated language and more clearly specify the functions of area agencies in accordance with requirements of the Older Americans Act.

ARM 37.41.116

The department proposes to amend this rule to update and clarify the required functions and composition of area agency advisory councils. The proposed changes align with requirements of the Older Americans Act.

ARM 37.41.117

The department proposes to amend this rule to update and clarify the required content of area plans that must be maintained by area agencies. The proposed changes align with requirements of the Older Americans Act.

ARM 37.41.119

The department proposes to amend this rule to clarify the criteria and process governing the department's approval of area plans.

ARM 37.41.120

The department proposes to amend this rule to update and clarify when area plan amendments are required.

ARM 37.41.121

The department is proposing technical and stylistic amendments to clarify this rule governing the direct provision of services by area agencies.

ARM 37.41.122 and 37.41.130

The department proposes to amend these rules to update and clarify criteria under which funds may be withheld from an area agency and the process for ensuring continuity of services for older adults in the event funds are withheld. The proposed changes align with requirements of the Older Americans Act.

ARM 37.41.131

The department proposes to amend this rule to update and clarify contributions for services by older adults in accordance with requirements of the Older Americans Act.

ARM 37.41.132

The department proposes technical and stylistic changes to improve the clarity of this rule governing the provision of congregate nutrition services.

ARM 37.41.202

The department proposes to amend this rule to clarify the meaning of terms used within the senior farmers' market nutrition rules and to provide for a better understanding of these rules.

ARM 37.41.206

The department proposes to amend this rule to incorporate rule language contained within ARM 37.41.207. The purpose of the proposed amendment is to consolidate farmer eligibility and participation requirements into a single rule.

ARM 37.40.301

The department proposes to amend this rule to update terminology and clarify requirements concerning who is eligible to receive nutrition services in accordance with requirements of the Older Americans Act.

ARM 37.41.302

The department proposes to amend this rule to clarify the meaning of terms used within the nutrition services rules and to provide for a better understanding of these rules.

ARM 37.41.306

The department proposes technical and stylistic changes to improve the clarity of this rule governing nutrition service provider requirements.

ARM 37.41.308

The department proposes to amend this rule to update and clarify congregate nutrition service provider requirements in accordance with requirements of the Older Americans Act.

ARM 37.41.315

The department proposes to amend this rule to update and clarify home-delivered nutrition service provider requirements in accordance with requirements of the Older Americans Act.

Rules Proposed for Repeal

The department proposes the repeal of ARM 37.41.118, 37.41.133, and 37.41.207 because each of these rules has either been consolidated with other rules or is repetitive of existing requirements under federal law.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

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., June 21, 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 <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 mail on August 25, 2023.

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.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State May 14, 2024.