

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 37.40.702 pertaining to Home ) PROPOSED AMENDMENT  
Health Services )

TO: All Concerned Persons

1. On June 13, 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 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/82538959166?pwd=YINNcmwrQ2ZjZXVuZGhuTUF3cDRiQT09>, meeting ID: 825 3895 9166, and password: 679822; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 825 3895 9166, and password: 679822. Find your local number: <https://mt-gov.zoom.us/u/kMytbYJaS>.

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](mailto:hhsadminrules@mt.gov).

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

37.40.702 HOME HEALTH SERVICES, REQUIREMENTS (1) through (3) remain the same.

(4) Home health services must be provided in accordance with the requirements of 42 CFR 440.70. The department adopts and incorporates by reference 42 CFR 440.70, as amended May 8, 2020, which sets forth requirements for home health services. A copy of the regulation may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 1100 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210 or by visiting <https://www.ecfr.gov/>.

~~(4) Home health services must be:~~

~~(a) ordered by the member's attending physician;~~

~~(b) part of a written plan of care; and~~

~~(c) reviewed and renewed by the member's attending physician at a minimum of 60 day intervals.~~

- ~~(5) A written plan of care must include:
  - ~~(a) how care is to be provided;~~
  - ~~(b) a summary of the member's condition;~~
  - ~~(c) documentation of the medical necessity;~~
  - ~~(d) rationale for the required skill level;~~
  - ~~(e) treatment plans;~~
  - ~~(f) discharge goals; and~~
  - ~~(g) certification by the member's physician.~~~~
- ~~(6) A member's need for medical supplies, equipment, and appliances must be reviewed annually by the member's attending physician.~~
- ~~(7) All member records related to the delivery of home health services must be current and available upon request of the department or its designated representative.~~
- ~~(8) For the initiation of home health services, the department requires an initial face-to-face encounter, which must be related to the primary reason the member requires home health services and must occur within 90 days before or within 30 days after the start of care.
  - ~~(a) The face-to-face encounter shall be conducted by the certifying physician, an authorized non-physician practitioner (NPP), or an attending or post-acute physician when the member is being admitted to home health services immediately following an acute or post-acute stay.~~
  - ~~(b) NPPs authorized to perform the face-to-face encounters for home health services are:
    - ~~(i) a nurse practitioner;~~
    - ~~(ii) a certified nurse midwife;~~
    - ~~(iii) a clinical nurse specialist working with a physician; or~~
    - ~~(iv) a physician assistant working under the supervision of a physician.~~~~
  - ~~(c) If a NPP performs the face-to-face encounter, findings must be communicated to the certifying physician and included in the member's record.~~~~
- ~~(9) For the initiation of medical supplies, equipment, and appliances, a face-to-face encounter related to the reason the member requires medical equipment is required and must occur within six months prior to the start of the services.
  - ~~(a) The face-to-face encounter for medical equipment shall be conducted by the certifying physician or an authorized NPP, with the exception of a certified nurse midwife.~~~~
- ~~(10) and (11) remain the same but are renumbered (5) and (6).~~

AUTH: 53-6-113, MCA  
IMP: 53-6-101, 53-6-131, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.402 to update requirements relating to home health services. The proposed rule change is necessary to align with federal requirements under 42 CFR 440.70 and a State Plan Amendment approved by the Centers for Medicare & Medicaid Services on August 28, 2023. A copy of the approved State Plan

Amendment is electronically accessible at:  
<https://www.medicaid.gov/sites/default/files/2023-08/MT-23-0013.pdf>.

The department is proposing to adopt and incorporate by reference 42 CFR 440.70, as amended May 8, 2020, and to strike language within ARM 37.40.702 that is either repetitive or inconsistent with the requirements of the federal regulation. The proposed rule change expands the types of medical practitioners who are authorized to order home health services and perform face-to-face encounters. Under the current rule, only physicians are authorized to order home health services. The proposed rule change allows nurse practitioners, clinical nurse specialists, and physician assistants to order home health services. The proposed rule change also allows face-to-face encounters to take place through telehealth.

### Fiscal Impact

The proposed rule amendment expands the types of medical practitioners who are authorized to order home health services. While the overall trend in home health service utilization is relatively low, there's potential for a modest increase in the total cost of services with expansion of the types of practitioners authorized to order the services. Based on historical data, the total reimbursed claims for home health services have shown slight variability:

- In Fiscal Year (FY) 2021, the total cost of services was \$491,695.24, with 310 members served, and 1,153 claims paid.
- In FY 2022, the total cost of services was \$472,205.03, with 285 members served, and 1,396 claims paid.
- In FY 2023, the total cost of services was \$419,390.46, with 262 members served, and 1,351 claims paid.

Projecting for FY 2024, the estimated total reimbursed claims could reach approximately \$423,784.00.

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: 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](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., June 21, 2024.

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.

8. 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>.

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

10. 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.

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

Certified to the Secretary of State May 14, 2024.