

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

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Subchapter 1

General Provisions

37.36.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Appropriate communication device" means the communication device which most efficiently allows access to an ordinary telecommunications system by a person with a telecommunications usage disability.

(2) "Committee" means the committee on telecommunications access services, formerly known as the committee on telecommunications access services for the handicapped, established in 2-15-2212, MCA.

(3) "Deaf" means having a full or partial decrease in the ability to detect or understand sounds or discriminate speech.

(4) "Deaf-blind" means:

(a) being deaf, severely hearing disabled or hard of hearing; and

(b) being blind or visually disabled; and

(c) requiring the use of specialized telecommunications equipment to communicate effectively using an ordinary telecommunications system.

(5) "Director" means the person employed by the committee on telecommunications services to administer the Montana Telecommunications Access Program (MTAP).

(6) "End user connection" means a customer's connection to a service provider's network.

(7) "Family" means the person with a telecommunications usage disability and the relatives with whom the person resides as specified in (7)(a) through (7)(d), except that if the person with a telecommunications usage disability is a foster child, "family" means the foster child only and does not include the persons with whom the foster child resides, whether related or unrelated to the child. Relatives of the person with a telecommunications usage disability included in the household when the person is not a foster child are:

(a) the spouse;

(b) the mother and/or father, if the person with a telecommunications usage disability is a minor child. This includes biological parents and parents by adoption and, at the option of the person with a telephone usage disability, may include stepparents;

(c) minor children. This includes biological children and children by adoption and, at the option of the person with a telecommunications usage disability, may include stepchildren; and

(d) minor siblings, but only if the person with a telecommunications usage disability is a minor. This includes half-siblings and, at the option of the person with a telecommunications usage disability, may include stepsiblings.

(8) "Family income" means the combined income of all members of the family of the person with the telecommunications usage disability.

(9) "Hard of hearing" means having a hearing loss to the extent that the person requires specialized telecommunications equipment to communicate effectively using an ordinary telecommunications system.

(10) "Income" means income as defined in ARM 37.2.702.

(11) "MTAP" means the Montana Telecommunications Access Program.

(12) "Mobility disabled" means having reduced function of the arms and hands, making activities related to moving, turning or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

(13) "Person with a telecommunications usage disability" means an individual who is deaf, deaf-blind, hard-of-hearing, speech disabled, or mobility disabled and is in need of specialized telecommunications equipment.

(14) "Program" means the Montana Telecommunications Access Program.

(15) "Service provider" means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service and access to the telecommunications relay service. The term includes providers of telecommunications service including but not limited to providers of internet protocol-enabled voice communications service.

(16) "Specialized telecommunications equipment" means any telecommunications device which enables or assists a person with a telecommunications usage disability to communicate with others by means of the public switched telephone network or internet protocol-enabled voice communications service. The term includes but is not limited to telecommunications devices, puff-blow devices, electronic artificial larynx devices, amplified handsets, telebraille, and equipment for the mobility disabled.

(17) "Speech disabled" means having a speech impediment which renders speech on an ordinary telecommunications system unclear and susceptible to misunderstanding.

(18) "Subscriber" means an end user who receives telecommunications network access from a service provider.

(19) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt. (History: 53-19-305, 53-19-307, MCA; IMP, 53-19-305, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2004 MAR p. 1398, Eff. 6/18/04; AMD, 2009 MAR p. 1672, Eff. 9/25/09.)

Subchapter 2

Assessment, Reporting, and Records

37.36.201 ASSESSMENT (1) A fee of ten cents per month shall be assessed on each end user connection provided and billed and against any prepaid options by a service provider.

(a) A service provider that periodically bills subscribers for services shall bill subscribers for the fee.

(b) In the case of subscribers who are not billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the service provider shall collect the fee using one of the following methods:

(i) by including in the price of the service a fee of ten cents for each 30-day period during which the subscriber is authorized to use the services;

(ii) by collecting the fee on a monthly basis from each subscriber whose account balance is equal to or greater than the fee; or

(iii) by collecting the fee of ten cents per month times the number of prepaid subscribers. The service provider shall calculate the number of prepaid subscribers by dividing total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless industry.

(2) Subscribers are not required to pay the assessment in the month they first receive access to the telecommunications network but must pay the assessment in the month their access terminates. (History: 53-19-305, 53-19-307, MCA; IMP, 53-19-311, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2009 MAR p. 1672, Eff. 9/25/09.)

37.36.202 EXEMPTIONS (1) The following are exempt from the assessment provided in ARM 37.36.201:

(a) federal agencies and tax-exempt instrumentalities of the federal government;

(b) Indian tribes, with regard to end user connections on the tribe's reservation only;

(c) enrolled members of Indian tribes, with regard to end user connections on a reservation only;

(d) official station testing lines owned by a provider; and

(e) coin operated telephones owned by a provider.

(2) All other subscribers of a local exchange company must pay the assessment provided in ARM 37.36.201. (History: 53-19-307, MCA; IMP, 53-19-305, 53-19-311, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2009 MAR p. 1672, Eff. 9/25/09.)

Rules 37.36.203 through 37.36.205 reserved

37.36.206 REPORTING REQUIREMENTS (1) Each provider must complete and file with the Department of Revenue a quarterly reporting form on or before the last day of the month following the end of each calendar quarter.

(2) The quarterly reporting form must provide the following information:

(a) ending date of the calendar quarter covered by the return being filed;

(b) name and address of the provider;

(c) total number of exempt and nonexempt end user connections for the calendar quarter;

(d) number of nonexempt end user connections for the quarter;

(e) amount of fee computed by multiplying the total number of nonexempt end user connections times ten cents per month of service during the quarter;

(f) credits for uncollectible accounts, incorrect billings, and other appropriate adjustments if the provider elects to take a credit;

(g) amounts collected in the quarter for any accounts reported as uncollectible in a previous quarter if the provider has elected to take a credit under (f);

(h) credits for 3/4 of 1% of the total charges billed and collected each month to cover administrative expenses if the provider elects to take a credit; and

(i) the amount remitted with the return. (History: 53-19-305, 53-19-307, MCA; IMP, 53-19-305, 53-19-311, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2009 MAR p. 1672, Eff. 9/25/09.)

37.36.207 EXAMINATION OF RECORDS (1) An authorized agent of the committee may examine the records and other supporting data from which the quarterly returns required by ARM 37.36.202 were prepared during regular business hours with a minimum of two weeks prior notice. (History: 53-19-307, MCA; IMP, 53-19-312, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

Subchapter 3 reserved

Subchapter 4

Equipment

37.36.401 LOANS (1) Specialized telecommunications equipment will be loaned to a person who satisfies the eligibility requirements of ARM 37.36.603 after the individual has received training and signed a written agreement accepting the conditions of the loan prescribed in ARM 37.36.612.

(2) If more than one person in a single household is eligible for a loan, the household is not limited to one piece of equipment but is entitled to specialized telecommunications equipment for each eligible member of the household. (History: 53-19-307, MCA; IMP, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2004 MAR p. 1398, Eff. 6/18/04.)

37.36.402 OWNERSHIP (1) All equipment loaned through MTAP will remain the property of the state of Montana. All equipment will be recorded and tracked for a minimum of five years by serial number, state of Montana identification tag and name, address, and telephone number of recipient. (History: 53-19-307, MCA; IMP, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2004 MAR p. 1398, Eff. 6/18/04.)

Rules 37.36.403 through 37.36.405 reserved

37.36.406 SECURITY DEPOSIT (REPEALED) (History: 53-19-307, MCA; IMP, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; REP, 2004 MAR p. 1398, Eff. 6/18/04.)

Subchapter 5 reserved

Subchapter 6

Eligibility and Application Process

37.36.601 PROVISION OF INFORMATION (1) Upon request, the program will provide an application form and informational brochure describing the eligibility requirements and application process. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

37.36.602 APPLICATION PROCESS (1) A person wishing to receive a loan of specialized telecommunications equipment shall complete the application and return it to the address designated in the application form. Application may be made by the person wishing to receive equipment, by a parent or legal guardian of a person under the age of 18 years or by a person duly authorized by the person or by a court to act on the person's behalf.

(2) In the case of an unemancipated person under the age of 18 years, a parent or legal guardian must sign the application and must assume full responsibility for the equipment and services. This is not required in the case of an emancipated person under the age of 18. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

37.36.603 NONFINANCIAL ELIGIBILITY CRITERIA (1) To be eligible for a loan of specialized telecommunications equipment, an applicant, in addition to meeting the financial criteria for eligibility specified in ARM 37.36.604, must:

- (a) be a resident of Montana;
- (b) have a telephone usage disability;
- (c) be able to demonstrate that the applicant would benefit from the use of specialized telecommunications equipment;
- (d) be able to demonstrate the applicant's ability to understand the nature and use of the equipment; and
- (e) have regular access to telephone service.

(2) Specialized telecommunications equipment will be loaned to a person who satisfies the requirements of this rule and of ARM 37.36.604 for eligibility after the person has received training and signed a written agreement accepting the conditions of the loan prescribed in ARM 37.36.612.

(3) A person who is otherwise eligible shall not be eligible for a loan of equipment if:

- (a) the person lives in a residential or treatment facility which directly or indirectly receives federal funding and which is required to be fully telephone accessible to all residents under the Rehabilitation Act of 1973, 29 USC 774; and
- (b) is eligible for and can obtain specialized telecommunications devices through such federal provisions. (History: 53-19-307, MCA; IMP, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2004 MAR p. 1398, Eff. 6/18/04.)

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the 2009 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS 2009 annual poverty guidelines for families of various sizes are shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$27,075
Two	36,425
Three	45,775
Four	55,125
Five	64,475
Six	73,825
Seven	83,175
Eight	92,525
Each Additional Person, Add	9,350

(3) There is no asset test to be eligible for a loan of specialized telecommunications equipment. (History: 53-19-305, 53-19-307, MCA; IMP, 53-19-305, 53-19-307, MCA; NEW, 2004 MAR p. 1398, Eff. 6/18/04; AMD, 2006 MAR p. 1052, Eff. 4/21/06; AMD, 2009 MAR p. 1672, Eff. 9/25/09.)

Rule 37.36.605 reserved

37.36.606 VERIFICATION REQUIREMENTS (1) The program may request from the applicant verification of the applicant's gross annual income and/or the applicant's telephone usage disability. The applicant must provide requested verification within 30 days of the date of request or the application will be denied. (History: 53-19-307, MCA; IMP, 53-19-305, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

37.36.607 NOTICES (1) The applicant will be notified in writing whether the application is denied or approved. Notice must be given within 30 days of the date of receipt of the application if no verification is requested. If verification of income and/or telephone usage disability is requested, notice must be given within 30 days of the date of receipt of the necessary verification.

(2) If the application is approved, the notice must state the location where applicant may receive the equipment and the date, time and place of the training required under ARM 37.36.612.

(3) If the application is denied, the notice must state the reason for the denial and must notify the applicant of the appeal procedure provided in ARM 37.36.902.

(4) If a loan of equipment is terminated due to failure to comply with any of the conditions specified in ARM 37.36.612 or for any other reason, the recipient must be notified in writing of the reason for the termination and of the appeal procedure provided in ARM 37.36.902. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

Rules 37.36.608 and 37.36.609 reserved

37.36.610 DETERMINATION OF APPROPRIATE TELECOMMUNICATION DEVICE (1) The program shall consult with the applicant to determine the appropriate telecommunication device or devices. However, the program shall make the final determination, taking into consideration the needs and wishes of the applicant and available funding. (History: 53-19-307, MCA; IMP, 53-19-305, 53-19-307, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064; AMD, 2006 MAR p. 1052, Eff. 4/21/06.)

37.36.611 PRIORITIES (1) If program resources are not sufficient to provide equipment to all eligible applicants, equipment will be loaned on a first come, first served basis. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

37.36.612 REQUIRED TRAINING AND CONDITIONS OF ACCEPTANCE

(1) A person whose application for a loan has been approved must complete training as required by the program and must demonstrate the ability to use the equipment before specialized telecommunications equipment will be issued.

(2) A person who has completed the required training and has been issued equipment may be required to complete further training before being issued new or replacement equipment.

(3) Before equipment is issued, the person to receive equipment, or the person's parent or legal guardian if the person is under the age of 18 years and is not emancipated, must agree in writing to the following conditions:

(a) The equipment is for use with a telephone and for no other purpose. If a recipient no longer has regular access to telephone service, the loan will be terminated and the equipment must be returned to the program.

(b) The recipient must protect the equipment from damage. Any equipment which is damaged by deliberate abuse or misuse will not be replaced.

(c) Any equipment needing repair must be taken to a repair service authorized by the program or to the program office immediately. The recipient shall not take the equipment apart or attempt to repair it.

(d) Stolen equipment must be reported to the proper law enforcement authority within 24 hours of the discovery of the theft and a copy of the written theft report must be sent to the program within five days of the date of making the report.

(e) Lost equipment, other than that reported stolen, must be reported to the program within five days of loss. Lost equipment will not be replaced.

(f) Because the equipment is owned by the state of Montana, it may not be taken out-of-state for more than 90 consecutive days without written authorization in advance from the program.

(g) If the recipient's address changes within the state of Montana, recipient must notify the program of the new address within 20 days after the date of the move. If the recipient moves out of the state of Montana, the equipment must be returned prior to the move.

(h) The recipient must not sell, give away, or loan the equipment to any other person or entity.

(i) The recipient will be liable to the state of Montana for any claims for damages or expenses arising from the misuse of loaned equipment by any person or entity. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

Subchapters 7 and 8 reserved

Subchapter 9

Appeal Process and Procedures

37.36.901 GROUND FOR APPEAL (1) In accordance with the procedures set forth in ARM 37.36.902, an applicant or recipient may appeal any decision of the program regarding:

- (a) eligibility for a loan;
- (b) what is the appropriate communication device for the applicant or recipient;
- (c) priority for distribution of communication devices; or
- (d) termination of a loan. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)

37.36.902 APPEAL PROCEDURES (1) To appeal any program decision specified in ARM 37.36.902, an applicant or recipient must submit to the program a clear written statement that the applicant or recipient is dissatisfied with the decision and wishes to appeal it. The statement must be received by the program within 60 calendar days after the date notice of the decision is given to the applicant or recipient.

(a) If notice of a program decision is given by mail, the 60-day appeal period begins to run the day after the notice is mailed.

(2) Within 30 calendar days after receipt of an appeal, a representative of the program shall meet with the applicant or recipient to attempt to informally resolve the disputed matter. Within ten calendar days after this informal meeting, the program shall prepare a written summary of the issues in dispute and the proposed resolution and shall provide a copy to the applicant or recipient and the director.

(3) An applicant or recipient who is not satisfied with the proposed resolution of the matter after the informal meeting may request a hearing before the committee. A hearing before the committee must be held within 90 days of the date of receipt of the request for hearing. At the hearing the applicant or recipient may:

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(a) be represented by legal counsel or a lay advocate; and
(b) may present evidence in support of the applicant or recipient's position, including but not limited to the testimony of witnesses, documents, or other written exhibits.

(4) When a recipient's loan is terminated from the program and the recipient files a timely appeal of the termination, the recipient shall be entitled to keep the equipment until the disputed matter is resolved. The matter is resolved when:

- (a) the recipient accepts the proposed resolution after the informal meeting;
(b) the committee renders a decision after hearing; or
(c) the recipient withdraws the appeal. (History: 53-19-307, MCA; IMP, 53-19-305, MCA; NEW, 1997 MAR p. 505, Eff. 3/11/97; TRANS, from SRS, 1998 MAR p. 2064.)