

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 71

LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM (LIWAP)

Subchapter 1

General Program Administration

- Rule 37.71.101 Safeguarding/Sharing Information
- 37.71.102 Role of the Local Contractor
- Rules 37.71.103 through 37.71.105 reserved
- 37.71.106 Fair Hearings
- 37.71.107 Referrals to the Department of Justice
- Rules 37.71.108 and 37.71.109 reserved
- 37.71.110 Fraud

Subchapter 2 reserved

Subchapter 3

Application and Eligibility Determination

- Rule 37.71.301 Notification of Eligibility Determination
- Rules 37.71.302 and 37.71.303 reserved
- 37.71.304 Notice of Adverse Action
- Rules 37.71.305 through 37.71.307 reserved
- 37.71.308 Application/Eligibility

Subchapter 1

General Program Administration

37. 71. 101 SAFEGUARDING/SHARING INFORMATION

(1) Disclosure of information concerning applicants for or recipients of weatherization assistance for low income persons is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing benefits to or on behalf of applicants and recipients.

(a) When information is released, such information will be accompanied with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department will attempt to obtain prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third party medical recovery. (History: Sec. 53-2-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; TRANS, from SRS, 1998 MAR p. 2061.)

37. 71. 102 ROLE OF THE LOCAL CONTRACTOR (1) The department will contract with appropriate community-based organizations in the state to provide outreach, receive and process applications and provide weatherization services for the low income weatherization assistance program. A local contractor may provide one or all of these functions as designated by the department.

(a) In providing outreach, the local contractor performs activities designed to inform potentially-eligible households of the existence of and the benefits available under the low income weatherization assistance program.

(b) In receiving and processing applications, the designated local contractor determines household eligibility under the rules contained in this chapter.

(c) The designated local contractor shall see that priority is given to identifying and providing weatherization assistance to elderly and handicapped low income persons using a computerized listing of households prioritized for service provided by the department and described in ARM 37.71.601. The computerized listing may be amended by the designated local contractor using the procedure described in ARM 37.71.601.

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

(2) The designated local contractor provides weatherization service for eligible low income persons according to the rules and regulations of the United States department of energy (DOE) as found in 10 CFR 440 and the provisions of the contract for weatherization for low income persons. The department hereby adopts and incorporates by reference 10 CFR 440 which sets forth the specifications, weatherization techniques and material standards for weatherizing low income dwellings. A copy of 10 CFR 440 may be obtained from the Department of Public Health and Human Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604. (History: Sec. 53-2-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; TRANS, from SRS, 1998 MAR p. 2061.)

Rules 03 through 05 reserved

LOW INCOME WEATHERIZATION
ASSISTANCE PROGRAM

37. 71. 106

37. 71. 106 FAIR HEARINGS (1) Any person who is aggrieved by an adverse department action taken on his application, benefit status, form or condition of services, may request a fair hearing as provided in ARM 37. 5. 304, 37. 5. 305, 37. 5. 307, 37. 5. 310, 37. 5. 311, 37. 5. 313, 37. 5. 318, 37. 5. 322, 37. 5. 325, 37. 5. 328, 37. 5. 331, 37. 5. 334 and 37. 5. 337.

(2) It is the responsibility of the department through the designated local contractor to inform every applicant/ recipient in writing at the time of application and at the time any action affects his benefits of the right to request a fair hearing. (History: Sec. 53-2-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

NEXT PAGE IS 37-15569

37. 71. 107 REFERRALS TO THE DEPARTMENT OF JUSTICE

(1) When requested by the department, the department of justice shall have the power and duty to:

(a) investigate matters relating to weatherization assistance including, but not limited to, the claim for an acceptance of benefits by recipients and the receipt and disbursement of funds by the department or the local contractor; and

(b) institute civil and criminal actions in the appropriate courts to enforce the welfare laws with respect to low income weatherization assistance and violations thereof.

(2) The audit and compliance bureau is the liaison between the department and the department of justice. Referrals of fraud and requests for investigation must be sent to the Department of Public Health and Human Services, Quality Assurance Division, Audit and Compliance Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953, before they are referred to the department of justice. When the department of justice makes a direct request to the local contractor for case information, the information may be sent directly to the department of justice. (History: Sec. 53-2-201 and 90-4-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2002 MAR p. 3635, Eff. 11/28/02.)

Rules 08 and 09 reserved

LOW INCOME WEATHERIZATION
ASSISTANCE PROGRAM

37. 71. 110

37. 71. 110 FRAUD (1) Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device low income weatherization assistance to which he is not entitled is guilty of theft as provided in 45-6-301, MCA.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the audit and compliance bureau. The bureau may in turn refer the matter to the department of justice or the county attorney of the county in which the recipient resides for further action. (History: Sec. 53-2-201 and 90-4-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2002 MAR p. 3635, Eff. 11/28/02.)

Subchapter 2 reserved

Subchapter 3

Application and Eligibility Determination

37. 71. 301 NOTIFICATION OF ELIGIBILITY DETERMINATION

(1) An individual who makes application for low income weatherization assistance will receive written notice of eligibility including priority for service. If the applicant is determined ineligible, notification shall include the reasons for nonapproval.

(2) Households determined eligible but not prioritized high enough to receive service must be redetermined for eligibility after one year from initial application except that redetermination may be made within a year if a reasonable suspicion of change of status occurs.

(3) Notification of eligibility shall contain the following: "Because of limited funds, homes are weatherized on a priority basis with special consideration given to handicapped and elderly. You will be notified when funds become available to weatherize your home. If not notified within one year, you must reapply to be reassigned priority for service." (History: Sec. 53-2-201 and 90-4-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2002 MAR p. 3635, Eff. 11/28/02.)

Rules 02 and 03 reserved

LOW INCOME WEATHERIZATION
ASSISTANCE PROGRAM

37. 71. 304

37. 71. 304 NOTICE OF ADVERSE ACTION (1) Each person determined eligible for weatherization assistance must be notified by the designated local contractor in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing. (History: Sec. 53-2-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; TRANS, from SRS, 1998 MAR p. 2061.)

Rules 05 through 07 reserved

LOW INCOME WEATHERIZATION
ASSISTANCE PROGRAM

37. 71. 308

37. 71. 308 APPLICATION/ELIGIBILITY (1) Elderly or handicapped persons residing in a community residential facility as defined at 76-2-411, MCA need not apply for weatherization assistance as provided for in this subchapter. The department will determine their eligibility based on their living arrangement and the individual records available to the department. The department will provide a list of the eligible facilities to the designated local contractors. (History: Sec. 53-2-201, MCA; IMP, Sec. 90-4-201 and 90-4-202, MCA; NEW, 1991 MAR p. 311, Eff. 3/15/91; TRANS, from SRS, 1998 MAR p. 2061.)

NEXT PAGE IS 37-15601

Subchapter 4

Coverage and Conditions of Eligibility

37.71.401 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, DEFINITIONS (1) "Act of God" means an event caused solely by forces of nature without human involvement.

(2) "Energy burden" means the percentage of a household's income which is allocated to energy costs for the household's dwelling. The energy burden is calculated by dividing the household's actual or estimated annual heating costs by the household's annual income.

(3) "Weatherization related imminent threat to the health or safety of a household" means any adverse condition in a dwelling that:

(a) relates to a structure, appliance, system, or equipment that directly and significantly impacts the dwelling's energy usage or energy conservation, including but not limited to the dwelling's primary water heating and/or space heating systems; and

(b) creates a serious and immediate risk to the physical health or safety of residents of the dwelling.

(4) "Weatherization services" means improvements, repairs or other modification made to a dwelling for the purpose of reducing a household's energy burden. (History: 53-2-201, MCA; IMP, 53-2-201, 90-4-201, 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1988 MAR p. 289, Eff. 2/12/88; AMD, 1993 MAR p. 1113, Eff. 5/28/93; AMD, 1998 MAR p. 1416, Eff. 5/29/98; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2000 MAR p. 2707, Eff. 10/6/00; AMD, 2008 MAR p. 1592, Eff. 8/1/08.)

Rules 37.71.402 and 37.71.403 reserved

37.71.404 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, ELIGIBILITY (1) Persons eligible for the Low Income Energy Assistance Program (LIEAP) and who meet the requirements of ARM 37.71.601 are eligible for the Low Income Weatherization Program. (History: 53-2-201, MCA; IMP, 53-2-201, 90-4-201, 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1988 MAR p. 289, Eff. 2/12/88; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2000 MAR p. 2707, Eff. 10/6/00.)

Subchapter 5 reserved

Subchapter 6

Need and Amount of Assistance

37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE: PRIORITIES

(1) Except as provided in (1)(a), a dwelling is not eligible for weatherization services funded with U.S. Department of Energy (DOE) funds if the dwelling has been weatherized with DOE or Low Income Energy Assistance (LIEAP) funds after September 30, 1993.

(a) Regardless of the time limitations imposed in (1), DOE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with Northwestern Energy free weatherization (NWE) funds if the dwelling has been weatherized with NWE funds after January 1, 1995.

(a) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with LIEAP funds if the dwelling has been weatherized with DOE, LIEAP, or NWE funds within the ten years immediately preceding the date of the current application for weatherization.

(a) Regardless of the time limitations imposed in (2), LIEAP funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (3), LIEAP funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(4) Community residential facilities as defined at 76-2-411, MCA which are the residence for low income elderly or handicapped individuals are eligible for weatherization.

(5) In determining which eligible households will receive weatherization services and in what order, households in each of the governor's substate planning districts shall be ranked according to energy burden. Households with the highest energy burden shall be given the highest priority and households with the lowest energy burden shall be given the lowest priority.

(a) The energy burden, as defined in ARM 37.71.401, of households containing a member who is either 60 years of age or older or who has a disability as determined by the federal Social Security Administration under Title II or Title XVI of the Social Security Act will be multiplied by 1.25 for purposes of prioritization.

(6) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be given a higher priority than that dictated by energy burden. It is the obligation of the household to provide proof of an imminent threat to the health or safety of the household to the local contractor. The local contractor must request that the department give the household's dwelling a higher priority.

(7) Weatherization will be scheduled to minimize travel and other nonproductive costs.

(a) If nonproductive costs are excessive, the scheduled home may be delayed for weatherization at a later date but in no instance shall the scheduled home be delayed longer than one year or the end of the contract period whichever comes first.

(8) Eligible homes, scheduled to receive partial weatherization from any other agency, may be prioritized higher to allow coordination and avoid duplication of weatherization services.

(9) A multi-family unit prioritized high enough to be scheduled for service that is also one of several units that comprise a 66 2/3% eligible multi-family building shall have the entire building weatherized to avoid nonproductive costs.

(10) When a dwelling is prioritized high enough to be scheduled for weatherization work, the delivery of services will be deferred until a later date if providing the services would pose a threat to the health or safety of either a person who lives in the dwelling or of the weatherization installers. In such cases the delivery of services will be postponed until the conditions that pose a threat to health or safety have been resolved. Circumstances that justify the deferral of weatherization services include but are not limited to the following:

(a) A person who lives in the dwelling has known health conditions that prohibit the installation of insulation and other weatherization materials.

(b) The building structure or its mechanical systems, including electrical and plumbing, are in such a state of disrepair that failure is imminent and the conditions cannot be resolved cost-effectively.

(c) The house has sewage or other sanitary problems that would further endanger persons who live in the dwelling or weatherization installers if weatherization work were performed.

(d) The house has been condemned or electrical, heating, plumbing, or other equipment has been "red tagged" by local or state building officials or utilities.

(e) Moisture problems are so severe they cannot be resolved under existing health and safety measures and with minor repairs.

(f) Dangerous conditions exist due to high carbon monoxide levels in combustion appliances, and cannot be resolved under existing health and safety measures.

(g) A person who lives in the dwelling is uncooperative, abusive, or threatening to the crew, subcontractors, auditors, inspectors, or others who must work on or visit the house.

(h) The extent and condition of lead-based paint in the house would potentially create further health and safety hazards.

(i) In the judgment of the department, any condition exists which may endanger the health and/or safety of the work crew or subcontractor. (History: 53-2-201, 90-4-201, MCA; IMP, 53-2-201, 90-4-201, 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1982 MAR p. 2181, Eff. 12/31/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; AMD, 1988 MAR p. 289, Eff. 4/1/88; AMD, 1991 MAR p. 311, Eff. 3/15/91; AMD, 1993 MAR p. 1113, Eff. 5/28/93; AMD, 1996 MAR p. 1713, Eff. 6/21/96; AMD, 1998 MAR p. 1416, Eff. 5/29/98; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2002 MAR p. 3635, Eff. 11/28/02; AMD, 2007 MAR p. 974, Eff. 7/6/07; AMD, 2008 MAR p. 1592, Eff. 8/1/08.)

37.71.602 DETERMINING LOW INCOME WEATHERIZATION

ASSISTANCE (1) Weatherization assistance will be made to eligible households in accordance with the state standard of prioritized measures for sample dwellings as established in (4).

(2) Dwellings chosen to be weatherized shall receive those measures determined to be cost effective as defined in 10 CFR, part 440, as amended through February 1, 2002. The department adopts and incorporates by reference 10 CFR, part 440, as amended through February 1, 2002. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 111 N Jackson St., P.O. Box 202925, Helena, MT 59620-2925.

(3) The designated local contractor may reorder a standard for any of the following reasons:

(a) A local contractor completes the department approved energy audit and the audit reveals the cost-benefit ratio would be higher by reordering the standards as prioritized in (4). It must be noted in the client file that the reordering is the most appropriate cost-effective measure in this case and signed off by the weatherization coordinator.

(b) Material to complete the prioritized standard is not commercially available or fails to meet the materials standards as prescribed by DOE.

(4) STATE STANDARDS FOR WEATHERIZATION

Priority list for all homes

1. Heating systems
 - a. CO test
 - b. tune-ups
 - c. modifications
 - d. replacements
 - e. ducts (check for breaks and/or leakage)
2. Water heaters
 - a. CO test
 - b. insulation blanket (unconditioned spaces)
3. Air infiltration
4. Insulation
 - a. attic
 - b. wall
 - c. perimeter
 - d. floor
 - e. pipe and duct wrap
 - f. mobile home belly
5. Ventilation and moisture control
6. Storm windows
 - a. interior
 - b. exterior
7. Primary door replacement
8. General repairs and miscellaneous measures necessary to protect energy conservation materials or meet safety standards. (History: 53-2-201, 90-4-201, MCA; IMP, 53-2-201, 90-4-201, 90-4-202, MCA; NEW, 1982 MAR p. 1309, Eff. 7/1/82; AMD, 1983 MAR p. 1377, Eff. 9/30/83; AMD, 1988 MAR p. 289, Eff. 2/12/88; AMD, 1990 MAR p. 1960, Eff. 10/26/90; AMD, 1993 MAR p. 1113, Eff. 5/28/93; TRANS, from SRS, 1998 MAR p. 2061; AMD, 2002 MAR p. 3635, Eff. 11/28/02; AMD, 2007 MAR p. 1948, Eff. 11/22/07.)