BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I through XXVIII pertaining to home and community-based services for adults with severe disabling mental illness	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-390 pertaining to the public hearing on the proposed adoption of the above-stated rules, at page 1996 of the 2006 Montana Administrative Register, issue number 16.

2. The department has adopted new rules II (37.90.402), III (37.90.406), V (37.90.408), VII (37.90.413), VIII (37.90.420), IX (37.90.425), X (37.90.428), XII (37.90.430), XIII (37.90.431), XIV (37.90.432), XV (37.90.436), XVI (37.90.437), XVII (37.90.438), XVIII (37.90.440), XIX (37.90.441), XX (37.90.442), XXI (37.90.445), XXII (37.90.446), XXIII (37.90.447), XXIV (37.90.448), XXV (37.90.449), XXVI (37.90.450), XXVII (37.90.460), and XXVIII (37.90.461) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.90.401) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION (1) The department has submitted a proposal seeking approval from ~~T~~the U.S. Department of Health and Human Services (HHS) ~~has granted the department~~, under 42 CFS 441.300 through 441.310, ~~the authority~~ to establish a program of Medicaid funded home and community-based services for persons who have severe disabling mental illness, as defined in ARM 37.89.103, and who would otherwise have to reside in and receive Medicaid reimbursed care in a nursing facility or a hospital. Upon formal approval, the department will initiate the program in accordance with the conditions of approval governing federal and state authorities and these rules.

(2) through (4)(c) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE IV (37.90.410) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ELIGIBILITY AND SELECTION

(1) and (2) remain as proposed.

(3) A person is qualified to be considered for enrollment in the program if the person meets the following criteria:

(a) is at least 18 years of age ~~or older or is certified as disabled by~~ and, if under the age of 65, has been determined to be disabled according to the Social Security Administration;

(b) through (7)(h) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE VI (37.90.412) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: PLANS OF CARE (1) A plan of care is a written plan of supports and interventions, inclusive of personal recovery oriented goals to guide the provision of services, based on an assessment of the status and needs of a recipient. The plan of care describes the needs of the recipient and the services available through the program and otherwise that are to be made available to the recipient in order to maintain the recipient at home and in the community.

(2) through (10) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE XI (37.90.429) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: SUPPORTED LIVING, REQUIREMENTS (1) through (2)(f) remain as proposed.

(g) supported employment as specified at ~~[RULE XI]~~ [RULE XIV] (37.90.432);

(h) through (j) remain as proposed.

(3) An entity providing supported living services must ~~meet the following criteria:~~

~~(a) be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) or by the Council on Quality in the areas of integrated living, congregate living, personal, social and community services, community employment services, and work services; and~~

~~(b)~~ have two years experience in providing services to persons with mental disabilities.

(4) remains as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

4. In reviewing the rules in conjunction with the comments received, the department believes the requirement of proposed Rule XI (37.90.429), that providers of supported living through the Severe Disabling Mental Illness Program (SDMI) obtain accreditation either through the Commissioner of Accreditation of Rehabilitation Facilities (CARF) or the Council on Quality (the council), will present a

barrier to obtaining providers of those program services and recommends the proposed rule not include this requirement. The certification requirements of these bodies are unnecessary for purposes of quality assurance in that they would be duplicative of and less effective than the quality assurance requirements imposed through the federal approval process upon the administration of the SDMI Program by the state. Those federal requirements are enforced through reviews by the Centers for Medicare and Medicaid Services (CMS) and reporting provided by the state to CMS. The federal requirements are essential to the implementation and ongoing administration of the SDMI Program. In addition, these rules contain other features of quality assurance implementation. Therefore, Rule IX (37.90.425) has been adopted without the certification requirement.

In addition, the language in proposed Rule IV(3)(a) (37.90.410) is being changed to: "is at least 18 years of age, and, if under the age of 65, has been determined disabled according to Social Security Administration criteria". The language of the rule, as proposed, lacked adequate definition and the department has revised the language to more clearly state that those eligible for the program must fit the required categories of being at least 18 years of age, but if they are under the age of 65, they must also be determined to be disabled by the Social Security Administration. Anyone who is 65 or older qualifies for the program. By changing the language as proposed, the department is conforming the language to the standard language that is utilized by the state and federal programs.

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: A commentor is concerned that, in accordance with the language in proposed Rule I (37.90.401), the rules are to be effective upon formal adoption of the rules which may occur before the receipt of federal approval necessary for the implementation of the SDMI Program. The commentor suggests that the effective date of the proposed rules be rewritten to base the effective date on federal approval for the SDMI Program.

RESPONSE: The department agrees that the state cannot implement the SDMI Program until approval of that program is received from CMS. Therefore, persons will not be determined eligible for the program and services will not be available until after final approval is received from CMS. The text of the rule, as adopted, has been written to reflect the contingent effectiveness of the rules.

COMMENT #2: A commentor asks if an immediate family member for the purposes of proposed Rule III(2) (37.90.406) includes a parent.

RESPONSE: The department has made a policy decision after review of federal authorities and consideration of other guidance to define immediate family member as a spouse or legal guardian. Any family member who does not fit that description may be eligible to be reimbursed for the provision of services as a reimbursed provider or as an employee of a reimbursed provider.

COMMENT #3: A commentor commends Montana for moving forward with implementation of the SDMI Program as it will offer many critical services to individuals with serious mental illness. The commentor wishes more than 105 individuals could be served.

RESPONSE: The department appreciates the commentor's support for the implementation of the SDMI Program. At this time the program, based upon the 2005 legislative appropriation for the program, is limited to providing no more than 105 service slots.

COMMENT #4: A commentor asks the department to define the SDMI Program's services in accordance with evidence-based practices and to maintain fidelity to the evidence-based practices for services included in the program proposal submitted for federal approval. This commentor also asks Montana to implement outcome measures for the program and expresses a concern the proposed rules do not specify any outcome measurements.

RESPONSE: The department does not agree that it is necessary to set forth evidence-based principles and outcome goals in rule. Appendix H of the application submitted to CMS for approval includes language specific to quality assurance and outcome measures. These measures will be monitored by CMS through quality assurance reviews. The department has provided the commenter a copy of Appendix H of the Medicaid Waiver Application for Adults with Severe Disabling Mental Illness.

COMMENT #5: A commentor recommends the department consider an Assertive Community Treatment Program in the Butte-Silver Bow Region to assist in the delivery of the proposed SDMI Program services.

RESPONSE: The department appreciates the recommendation. There is currently no eligible provider of ACT services in the Butte-Silver Bow Region. Even should a provider be identified, it is not appropriate to include provision of ACT services in the SDMI Program. ACT services are already authorized in rule at ARM 37.88.901(13) as a component of mental health services that may be funded with Medicaid monies as a state plan service. The SDMI Program, as a Medicaid Home and Community Program, cannot provide services that are duplicative of those available through a Medicaid funded state plan service.

COMMENT #6: A commentor commends Montana for including a nurse and a trained social worker experienced in the mental health field as the case management team for consumers enrolled in the SDMI Program. The commentor states it would be helpful if the rules allowed for inclusion on the treatment planning team of the consumer, family members, peer support specialist, and the case manager to complete the treatment team and to jointly develop the plan of care. The recommendation is to revise the proposed rules to ensure the plan meets, in addition to the needs of the consumer, the needs of the consumer's family and the

consumer's support network.

RESPONSE: The department appreciates the commendation regarding the use of a case management team for managing the delivery of services to an eligible person. The case management team develops, in consultation with the consumer, the plan of care. The plan is to be person-centered. The rule is not written to prohibit the case management team from consulting with the consumer and others concerning the features of the plan of care. The consumer may ask the team to consult with any person the consumer chooses to involve in the plan of care development. Additionally, the case management team may consult with others who have knowledge of the consumer's needs.

COMMENT #7: A commentor recommends that the treatment planning should include a discussion of the consumer's strengths and of the supports in the consumer's community as well as the consumer's recovery oriented goals.

RESPONSE: The department agrees with the commentor's recommendation. While these features are addressed in the mandated Plan of Care Form and process, the department agrees that there should be recognition in the rules that the SDMI Program is intended to be recovery oriented and that consumers will be encouraged to develop goals that will support their personal recovery. Rule VI(1) (37.90.412) as adopted includes this language.

COMMENT #8: A commentor expresses a concern about the lack of adequate housing for persons with mental illness and states it will be a challenge to find adequate housing for some of the 105 individuals who are to be served through the SDMI Program.

RESPONSE: The department acknowledges that the availability of appropriate housing is important for the successful treatment of many consumers. Federal requirements preclude the provision of housing as a Medicaid funded home and community service. The department, however, expects that the case management teams will play an important role in helping consumers in locating appropriate housing and in transitioning those consumers into that housing.

COMMENT #9: A commentor expresses a concern that vocational therapy and supportive employment will be difficult to achieve and believes that supported employment should be a part of the services offered through the SDMI Program.

RESPONSE: The department agrees that supported employment is a primary service need for persons returning to active lives in their communities. Supported employment is an authorized component of the habilitation service as provided in Rule XIV (37.90.432).

COMMENT #10: A commentor states that the Addictive and Mental Disorders Division has made the integrated treatment of mental illness and chemical dependency a priority for the last three to five years and they are trying extremely

hard to make this treatment a reality, but there has not been significant progress in this area in spite of the best of intentions.

RESPONSE: The department appreciates the commentor's concerns and agrees that for persons with co-occurring illnesses chemical dependency services are very important to improvement in their mental health. Rule XX (37.90.442) does provide that chemical dependency counseling services are an available program service.

/s/ Cary Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 16, 2006.