

BIG SKY WAIVER REVIEW – CONSTITUENT MEETINGS

OCTOBER 22, 2020 MEETING MINUTES

MEETING OVERVIEW

Time	Agenda Item
2:00 – 2:30	Welcome and introductions
2:30 – 2:45	Review history/context setting
2:45 – 3:15	Define shared goals <i>What do we want to see change as a result of our work together?</i>
3:15 – 3:30	Define general approach to tying policy to rules
3:30 – 3:45	Define review process guiding principles
3:45 – 4:00	Thank you and next steps

CONTEXT SETTING

BIG SKY WAIVER GOALS

The goal of DPHHS is for Medicaid members to live and thrive in integrated community settings. Senior and Long Term Care Division’s mission is to advocate and promote dignity and independence for older Montanans and Montanans with disabilities by:

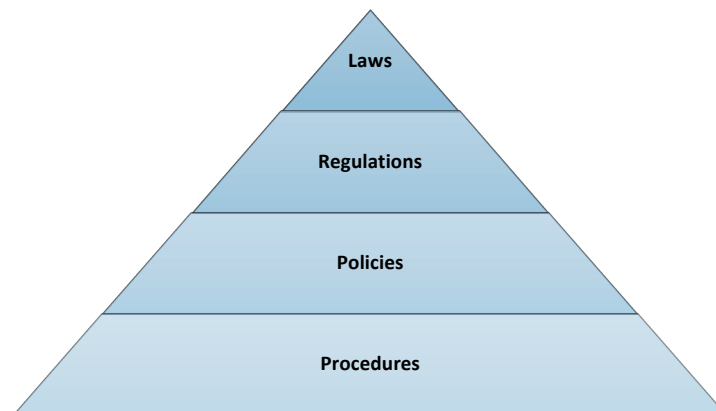
- Providing information, education, and assistance;
- Planning, developing, and providing for quality long-term care services; and
- Operating within a cost-effective service delivery system.

DPHHS operates 3 home and community based services (HCBS) waivers, which share the same overarching goal to provide an additional set of benefits to individuals who are eligible to receive an institutional level of care. By providing an additional set of benefits, those Montanans can live successfully and as independently as possible within their communities. The Montana Big Sky Waiver provides individuals with physical disabilities and people who are over 65 years old with long term services and supports that maximize independence and community integration, while assuring financial accountability. The Big Sky Waiver has been around for a long time, and it is

useful to look back and see all the work that helped waivers be what Montana needed at the time; it is also useful to look forward and see what needs to change to serve all Montanans as well as possible.

Today's meeting is the beginning of a review process, which is looking at both how to better administer the Big Sky Waiver in policy and rules as well discussing where policy needs to be updated in terms of content to be consistent, accurate, and work well for members, families, providers, and program manager.

ORDER OF AUTHORITY



Laws are passed by the legislature and signed by the president or the governor. All laws must be consistent with the authorities provided under the Constitution. Medicaid is authorized under Title XIX of the Social Security Act and Montana has laws authorizing Medicaid at the state level. Montana law is codified in the Montana Code Annotated (MCA).

Approved Medicaid Waiver Applications formalize the understanding between state and federal authorities overseeing Medicaid; CMS approves waiver applications. Waivers are initially approved for 3 years with renewals of up to 5 years.¹ Waiver services complement and/or supplement services available through the Medicaid state plan. Under a waiver, states can waive certain Medicaid requirements, targeting services to certain groups of people, types of diagnoses, or geographic areas. Waivers have to cost neutral, and states can impose caps on waiver program enrollment and average costs per person to not exceed the waiver's cost neutrality limit.² Approved waiver applications give states the right to operate waivers.

Regulations are published by agencies to clarify their interpretation of a law and how the law will be implemented and include requirements or prohibitions. Regulations must be consistent with laws and approved waiver applications. Montana's rules give citizens the right to access waiver services. Issuing and changing regulations requires formal processes of proposed regulation publication, a public hearing and open public comment period, finalizing rules based on public input, and filing a formal notice to change official rules of the State of Montana.

Policies further clarifies how an agency understands and implements existing laws and regulations. Policies do not provide mandatory requirements unless they are incorporated into a regulation or mandated under terms and conditions of an agreement, such as a funding agreement. Policies must be consistent with laws and regulations. Policies set some parameters for decision-making but leave some room for flexibility.

¹ <https://www.macpac.gov/subtopic/1915-c-waivers/>

² <https://www.macpac.gov/medicaid-101/waivers/>

Procedures are used to support consistent implementation of policies by the workforce. Procedures provide step-by-step descriptions of the tasks required to support and carry out policies.

DEFINE SHARED GOALS

Meeting attendees defined what they want to see change as a result of our work together through the BSW review process. Shared goals and objectives include:

- **Increase communication.** Increase communication to ensure an increased flow of accurate, consistent information between all stakeholders.
 - Increased communication should support increase stakeholder engagement, including people receiving waiver services, their family members, advocates, providers, program managers, and other interested parties.
 - Increased communication should support increased and consistent understanding across stakeholders.
 - A specific desire is to change the policy amendment process to be clearer about what changes have been made, by using strike throughs and other mechanisms in a marked-up version.
 - Participants want to enable or facilitate a cohesive process through the BSW review meetings.
- **Improve waiver functionality.** The waiver should function better, efficiently and effectively supporting members, providers, and managers.
 - Participants want to retain flexibility where possible to best meet members' needs within program constraints.
 - Meeting attendees want to see the waiver be efficient for providers and members, to help get services and supports to members in a timely manner.
 - Participants want to weed out conflicts in the waiver to develop a shared understanding of how the program should be implemented.
 - Stakeholders want to make sure waiver, ARM, policy, and procedure are consistent.
 - Meeting attendees want to clarify whether COVID policies will continue after the public health emergency, and what that process may look like.

DEFINE GENERAL APPROACH TO TYING POLICY TO RULES

There are three general alternatives to consider when defining how to approach connecting Big Sky Waiver policy and rule:

1. Keeping rule and policy separate.
2. A hybrid approach with parts of the policy manual moving to rule, and other parts staying in policy.
3. Anchoring all policy in rule.

Meeting attendees discussed the three alternatives and decided to pursue the hybrid approach, at least initially. We will reassess our approach as we incrementally move through the policy manual to make sure it is working well.

ALTERNATIVE 1: KEEP RULE AND POLICY SEPARATE

Maintain the separateness of the manual and the rule, as is currently the case. What would be different would be the department's processes to maintain policies and processes to ensure ongoing alignment.

- Manual must still coordinate with existing rules or future changes.
- Rule may not require updating when a policy changes.
- No required public process unless developed outside of rule process.
- Waiver change rules apply, which means that if make a change to the rule that conflicts with the waiver, then our waiver has to change to maintain consistency.
- Improved format for policies to make them more readable.
- DPHHS is committed to improving the communication process with proposed policy changes.
- Policy changes will be more clearly shared through marked up documentation.

ALTERNATIVE 2: HYBRID APPROACH

Develop a hybrid approach whereas the administrative portions of the manual are kept in a manual and all or a subset of substantive service-related policies are set into rule.

- Administrative functions – such as purpose of a form and how to use it are directed to case managers.
- Service-related definitions and limits would be incorporated into rule.
- Requires rule change when services change:
 - Public hearing
 - Tribal Consultation
- Adds time to the process.
- Provides public review on an on-going basis.
- Waiver change rules apply.
- Ensure substantive changes cannot be changed solely through the policy manual change process – want to have public input, especially when it comes to reducing services.
- Ideally, policy manual changes that are not anchored in rule going forward, if we are moving toward a hybrid approach – we decide which things are substantial and those go to rule and remainder goes through policy. Policy changes would go through a less formal communication process.
- The vision is that no one should have to look at all documents to understand the waiver – we want no inconsistencies between waiver, rules, policies, and procedures and no need to piece puzzle pieces together.

ALTERNATIVE 3: ANCHOR POLICY IN RULE

The policy manual is moved or referenced fully in regulation, and service references are removed from administrative rule.

- Requires rule change when services change, which includes:
 - Public hearing
 - Tribal Consultation
- Adds time to the process.
- Provides public review on an on-going basis.

- Waiver change rules apply.

BSW REVIEW GUIDING PRINCIPLES

1. We are committed to a collaborative, transparent process.
2. We value everyone's experience and expertise, and work to foster an inclusive, welcoming, respectful, and affirming environment.
3. We will strive for consensus wherever and whenever possible as we make decisions.
4. We want to use strengths-based, person-first language throughout BSW documentation.
5. We will use a hybrid approach to aligning regulations and policy.

NEXT STEPS

We will be meeting every Thursday, 2-4 PM through mid-December (with the exception of Thanksgiving) to dive into the policy manual, chapter by chapter. You will receive materials in advance so we can target the meeting to the policy sections needing the most attention. We will discuss placement issues (rule, policy, procedure), as well as pain points (policy that needs to be clarified or changed to work better). All meetings use the same zoom meeting information: Zoom: <https://mt-gov.zoom.us/j/98713369476>; Meeting ID: 987 1336 9476; Phone: (646) 558-8656.

We have an email list from today's meeting and will develop a place online for BSW review information, which we will share with everyone via email. Please feel free to reach out to Kirsten or Barb anytime with questions or comments. You can reach Kirsten at ksmith@bloomconsult.org or 406/570-0058 and Barb at BarbaraSmith@mt.gov.