



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-6.1**

**Summary**

Adoption of NEW RULES 1 through 7 and repeal of ARM 37.52.201, 37.52.204, 37.52.205, 37.52.206, 37.52.210, 37.52.214, and 37.52.220 pertaining to adoption assistance

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**Hearing Date and Time**

Friday, November 14, 2025, at 2:00 p.m.

**Virtual Hearing Information**

Join Zoom Meeting: <https://mt-gov.zoom.us/j/83324007036?pwd=yUcfZ7zzmDcJLWCRjO4CaUjtX4bqZR.1>

Meeting ID: 833 2400 7036 and Password: 604260

Dial by Telephone: +1 646 558 8656

Meeting ID: 833 2400 7036 and Password: 604260

Find your local number: <https://mt-gov.zoom.us/j/83324007036?pwd=yUcfZ7zzmDcJLWCRjO4CaUjtX4bqZR.1>

**Comments**

Comments may be submitted using the contact information below. Comments must be received by Friday, November 21, 2025, at 5:00 p.m.

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**Accommodations**

The agency 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. Requests must be made by Thursday, October 30, 2025, at 5:00 p.m.

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## **Contact**

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## **Rulemaking Actions**

### **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 DEFINITIONS**

The following definitions apply to the rules contained in this subchapter:

- (1) “Adoption assistance” means the financial and/or medical assistance and/or non-recurring expenses and/or other services provided under an adoption assistance agreement. At a minimum, adoption assistance must include Medicaid coverage for the adopted child and reimbursement of non-recurring adoption expenses.
- (2) “Adoption assistance agreement” means a written document between the department and the pre-adoptive parent(s) which is signed by all parties on the date of or prior to the final decree of adoption. The agreement is a written, binding agreement which specifies the amount, duration, and scope of any payments, services, and assistance to be provided under such agreement.
- (3) “Child with special needs” means a child who is a dependent of the department, a Montana federally recognized tribe which has entered into a Title IV-E agreement with the department, or a private licensed adoption agency, and meets at least one of the following criteria:
  - (a) diagnosed as having a physical, mental, or emotional disability;
  - (b) recognized to be at high risk of developing a physical, mental, or emotional disability;
  - (c) a member of a minority group;
  - (d) six years of age or older; or

- (e) a member of a sibling group to be placed together for adoption.
- (4) “Congregate care” means a therapeutic group home, group home, or shelter care facility fully licensed by the department.
- (5) “Independent adoption” means an adoption completed independent of involvement by the department, a Montana tribal social services agency, or a licensed child placing agency. Independent adoptions are not eligible for adoption assistance unless one of the following criteria are met:
  - (a) the child meets the eligibility criteria for Social Security Income (SSI); or
  - (b) the child being adopted received adoption assistance in a previous adoption and continues to be a child with special needs.
- (6) “Non-recurring adoption expenses” means reasonable and necessary legal fees and costs. This term includes court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal law.
- (7) “Private adoption” means an adoption completed through a private licensed child placing agency.
- (8) “Private licensed child placing agency” means an agency as defined in ARM 37.93.101.
- (9) “Reasonable efforts to place without adoption assistance” means the department must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate pre-adoptive parents without providing adoption assistance, has been made.
  - (a) The department staff must ask the pre-adoptive parent(s) whether they are willing to adopt without receiving assistance. The pre-adoptive parent(s) must indicate whether they can adopt the child without assistance, and the department staff must document the pre-adoptive parents’ response in the child’s case record.
  - (b) The department must establish reasonable efforts to place without adoption assistance except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with pre-adoptive parent(s) while in the care of such parent(s) as a foster child. Any exception to reasonable efforts to place without adoption assistance must be documented in the child’s case record.
- (10) “Tribal adoption” means an adoption established by a tribal court and the tribe has a Title IV-E agreement with the department. This can include adoptions without termination of parental rights if allowed under the tribal code.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-104, MCA

## **NEW RULE 2 ADOPTION ASSISTANCE AGREEMENT REQUIRED**

- (1) An adoption assistance agreement is negotiated between the pre-adoptive parents and the department. The agreement must:
  - (a) be negotiated and executed by the date of or prior to the date of the finalized adoption decree;
  - (b) indicate the terms and duration; and
  - (c) indicate it is binding on all parties.
- (2) The agreement covers non-recurring adoption expenses, monthly cash payments, social services, and medical care as provided under federal or state Medicaid programs.
- (3) The department is prohibited from using a means test when determining the amount, scope, and duration of the adoption assistance agreement. The agreement must be negotiated taking into consideration the circumstances of the adoptive parents and the needs of the child.
- (4) The monthly cash assistance cannot exceed ten dollars less, per month, than the prevailing foster care rate at the time the adoption is finalized.
- (5) As a condition of receiving adoption assistance, the adoptive parent(s) must ensure the child is:
  - (a) enrolled in school, if the child is age seven and above;
  - (b) enrolled in an authorized independent study program; or
  - (c) home-schooled consistent with the law of the state or other jurisdiction in which the school, program, or home is located during the entire time the adoption assistance agreement is in place.
- (6) If the pre-adoptive parents and the department are unable to reach an agreement on the terms or amounts of the adoption assistance agreement during the negotiation process, or if the pre-adoptive parents are denied adoption assistance the pre-adoptive parents may request a review of the determination by the Child and Family Services Division administrator.
- (7) If adoption assistance is denied by the Child and Family Services Division administrator, then the pre-adoptive parents may request a fair hearing.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-108, MCA

### **NEW RULE 3 RENEGOTIATION**

- (1) The adoptive parents may request the department renegotiate the amount of the monthly payment in the adoption assistance agreement if:
  - (a) there has been a change in the family's circumstances; or
  - (b) a higher foster care rate would have been paid on behalf of the child if the child had still been in foster care.
- (2) The renegotiated adoption assistance payment cannot exceed ten dollars less, per month, than the amount the child would have received if the child had been in foster care.
- (3) The adoptive parents may request the department renegotiate the adoption assistance agreement to extend beyond the child's 18th birthday if the child continues to meet special needs criteria and has not graduated high school or completed their authorized independent study program by age 18; however, the child is expected to graduate or complete the authorized independent study program on or before their 19th birthday.
- (4) The adoptive parents may request that the adoption assistance agreement be extended until the child is 21 years of age if the child has a mental or physical disability and remains in an educational program that warrants continuation of the agreement. The department has sole discretion to approve a request to extend adoption assistance until age 21.
- (5) If adoption assistance agreements are extended beyond the child's 18th birthday, then the family may request the amount of the monthly payment be renegotiated in accordance with (1) and (2).
- (6) If adoptive parents want to renegotiate the amount of the monthly payment or the length of the adoption assistance, they must contact the Child and Family Services Division (CFSD) Adoption Negotiations Program manager.
- (7) The adoptive parents may request a review of the determination by the CFSD administrator if the parent(s) and the department are unable to reach an agreement on the terms or amounts of the adoption assistance agreement during the renegotiation process.

- (8) If adoption assistance renegotiation is denied by the CFSD administrator, the adoptive parents may request a fair hearing.
- (9) The effective date of a renegotiated agreement will be the earlier of:
  - (a) the first day of the month following the renegotiated agreement being signed by the department and the adoptive family both parties;
  - (b) the first day of the month following the date the family requests a review by the CFSD administrator; or
  - (c) the date the child enters a congregate care facility.
- (10) Payments will not be approved retroactively for more than six months from the date of the request for renegotiation of the adoption assistance agreement.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-108, MCA

#### **NEW RULE 4 TERMINATION OF THE ADOPTION ASSISTANCE**

- (1) Once the adoption assistance agreement is in place, the agreement may be terminated under any of the following:
  - (a) the conclusion of the term of the agreement;
  - (b) the adoptive parents provide the department a written request to discontinue the agreement;
  - (c) upon the child's death;
  - (d) the death of the parent(s) of the child (one in a single parent family and both in a two-parent family);
  - (e) the agency determines that the child is no longer receiving any support from the adoptive parent(s);
    - (i) "Support" means various forms of financial support. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support.
    - (ii) The department may continue providing adoption assistance if it determines that the parent is providing some form of financial support to the child even in situations where the child is placed in some form of out-of-home care;

- (f) The department determines that the adoptive parent(s) are no longer legally responsible for support of the child. Parents are considered no longer legally responsible for support of the child when any of the following occur:
  - (i) parental rights have been terminated voluntarily or involuntarily;
  - (ii) the minor is emancipated;
  - (iii) the minor marries; or
  - (iv) the minor enlists in the military.
- (2) Adoptive parents are required to inform the department of circumstances that would make them ineligible to continue to receive adoption assistance.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-108, MCA

#### **NEW RULE 5 ELIGIBILITY REQUIREMENTS**

- (1) Pre-adoptive parents adopting a child from the custody of the department or through a private licensed child placing agency must meet the pre-placement provisions of 42-3-204, MCA, or the department cannot enter into an adoption assistance agreement.
- (2) Pre-adoptive parents adopting a child, who is under the jurisdiction of a federally recognized Montana tribal court, and the tribe has a Title IV-E agreement with the department, must do so in accordance with the tribe's established standards for approving adoptive placements. The tribal standards may differ from the pre-placement provisions of 42-3-204, MCA, but they must, at minimum, meet the provisions of SSA Title IV-E, Sec. 471(a)(20)(A). If these federal provisions are not met, the department cannot enter into an adoption assistance agreement.
- (3) In addition to pre-adoptive requirements in (1) and (2), the child being adopted must meet the following eligibility requirements:
  - (a) as required in the Social Security Act, Title IV-E, Sec. 473(a)(1)(A), all adoptions of children consented to by the department, tribal adoptions, and private adoptions are eligible to receive adoption assistance if the department has determined all the following:
    - (i) the child is a child with special needs; and
    - (ii) the child meets the adoption assistance eligibility criteria in the Social Security Act, Title IV-E, Sec. 473(2)(A), which specifically require:

- (A) that the child was removed from their home as a result of a judicial determination; and
  - (B) the initial court order sanctioning the child's removal contains language to the effect that it is contrary to the child's welfare to remain in their home.
- (4) In addition to (3), a child is also eligible for adoption assistance if either of the following criteria are met:
  - (a) the child meets the eligibility criteria for Social Security Income (SSI); or
  - (b) the child being adopted received adoption assistance in a previous adoption and continues to be a child with special needs.
- (5) At the discretion of the department and based upon the availability of funding, a child, certified as a child with special needs, adopted from the custody of the department may be eligible for adoption assistance without meeting the criteria in (3) or (4).

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-107, MCA

#### **NEW RULE 6 DETERMINATION REVIEW BY CHILD AND FAMILY SERVICES DIVISION ADMINISTRATOR AND FAIR HEARING REQUESTS**

- (1) If program staff determine that a child or family is ineligible for adoption assistance or deny a request for adoption assistance, the decision will be sent to the Child and Family Services Division (CFSD) administrator for review.
- (2) The CFSD administrator's review is limited to reviewing whether the program staff's determination was made in accordance with the pertinent federal and state requirements. The pertinent federal and state requirements will be found in the following documents:
  - (a) Social Security Act - Title IV-E;
  - (b) Title 45 of the Code of Federal Regulation;
  - (c) Administration For Children and Families' Child Welfare Policy Manual, Sec 8 – Title IV-E;
  - (d) Title 42, chapter 10, MCA; and
  - (e) ARM Title 37, chapter 52.

- (3) Circumstances that may result in the CFSD administrator overturning the program staff's determination that the child or family is ineligible for adoption assistance include:
  - (a) the child and adoptive family meet all requirements necessary to receive an adoption assistance agreement but adoption was finalized in state or tribal court prior to the assistance agreement being signed by the department and the adoptive family;
  - (b) the denial of adoption assistance was based on a means test of the adoptive family; or
  - (c) there was an erroneous determination by the department regarding the child's or adoptive family's ineligibility for adoption assistance.
- (4) After reviewing the specifics of the case and the pertinent federal and state requirements, the CFSD administrator will provide their decision in writing to the program staff.
  - (a) If the CFSD administrator determines the program staff's determination to deny adoption assistance was made in error, then the program staff will be instructed to negotiate and enter into an adoption assistance agreement with the family.
  - (b) If the CFSD administrator concurs with the program staff's determination that the child or adoptive family were not eligible for adoption assistance, then the adoptive family will be notified in writing of the decision.
    - (i) The denial notification provided to the family must include the reasons for the denial and that the denial was reviewed and upheld by the CFSD administrator.
    - (ii) The notice must also describe the adoptive parent's right to request a fair hearing.
- (5) If a post finalization fair hearing determines that a child has been wrongly denied adoption assistance, the department may complete a negotiation with the adoptive family and provide retroactive adoption assistance payments.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-108, MCA

## **NEW RULE 7 SUSPENSION OF ADOPTION ASSISTANCE**

- (1) The department may suspend adoption assistance payments if it cannot establish or cannot contact the adoptive parents to establish that the adoptive parent is:
  - (a) providing any support to the adopted child;
  - (b) legally responsible for the support of an adopted child under age 18; or
  - (c) complying with school attendance requirements for the adopted child.
- (2) Adoption assistance payments can only be suspended if the signed adoption assistance agreement contains language outlining the circumstances under which the department may suspend adoption assistance payments.
- (3) The department must provide adequate notice to the parent prior to suspending adoption assistance payments. Adequate notice includes:
  - (a) the department must send via certified mail, notification of intent to suspend adoption assistance payment, at least ten working days before the department intends to suspend payments;
  - (b) the notice must specify that the agency intends to suspend payments, the reason for the intended suspension, and the statutory basis for the intended suspension;
  - (c) the notice must provide the specific steps the adoptive family must take to reinstate adoption assistance payments; and
  - (d) the notice must describe the adoptive parent's right to request a fair hearing and that payments will continue through the fair hearing process.
- (4) Medicaid will not be suspended during the period in which the adoption assistance payment is suspended.
- (5) The suspension of the adoption assistance agreement has no impact on the legal relationship between the parent and child.

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-108, MCA

## **REPEAL**

The rules proposed to be repealed are as follows:

**37.52.201 PURPOSE**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-302, MCA

**37.52.204 ELIGIBILITY REQUIREMENTS**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-304, MCA

**37.52.205 APPLICATION OF PROSPECTIVE ADOPTIVE FAMILY**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-308, MCA

**37.52.206 AMOUNT AND DETERMINATION OF SUBSIDY**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-310, MCA

**37.52.210 REVIEW OF SUBSIDY PAYMENT**

**Authorizing statute(s):** 42-10-104, MCA

**Implementing statute(s):** 42-10-107, 42-10-108, 42-10-109, MCA

**37.52.214 POST PLACEMENT**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-311, MCA

## **37.52.220 OTHER AGENCIES**

**Authorizing statute(s):** 53-4-304, MCA

**Implementing statute(s):** 53-4-304, MCA

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### **General Reasonable Necessity Statement**

The Department of Public Health and Human Services (department) is proposing this rulemaking to update and clarify the administrative rules governing adoption assistance. These changes will also ensure that the rules reflect current practice as well as federal guidelines.

The definitions, eligibility requirements, application, adoption assistance payment, termination, post-adoption process, including appeal, are all being updated because of the rules not being reviewed and updated since 1998. These rules need to be updated due to changes and clarification in federal guidelines requiring updated changes in program practices, including due process requirements.

#### **ARM 37.52.201 PURPOSE**

This rule will be repealed and replaced by NEW RULE 1 in order to update the language to conform with federal guidance and current practice.

#### **ARM 37.52.204 ELIGIBILITY REQUIREMENTS**

This rule will be repealed and replaced by NEW RULE 5. The current rule was last updated in 1998. This change is necessary to conform with current federal guidance and clarify current practice.

#### **ARM 37.52.205 APPLICATION OF PROSPECTIVE ADOPTIVE FAMILY**

This rule will be repealed and replaced by NEW RULE 2 in order to conform with federal guidance and clarify current practice.

#### **ARM 37.52.206 AMOUNT AND DETERMINATION OF SUBSIDY**

The rule will be repealed and replaced by NEW RULE 2 in order to conform with federal guidelines for determination of adoption assistance. NEW RULE 2 clarifies current department practice.

#### **ARM 37.52.210 REVIEW OF SUBSIDY PAYMENT**

This rule will be repealed and replaced by NEW RULE 3 in order to conform with federal regulations and clarify current practice by providing more information about the process of reviews and renegotiation of adoption subsidy payments.

#### **ARM 37.52.214 POST PLACEMENT**

This rule is being repealed and NEW RULE 3 and NEW RULE 4 in order to conform with federal guidance and clarify current practice.

#### ARM 37.52.220 OTHER AGENCIES

This rule will be repealed and replaced by NEW RULE 5 in order to conform with federal guidance and clarify current practice.

#### NEW RULE 1 DEFINITIONS

The addition of definitions is necessary to provide clarity and common language around the provision of adoption assistance.

#### NEW RULE 2 ADOPTION ASSISTANCE AGREEMENT REQUIRED

This new rule is necessary to provide information and clarification around information in the adoption assistance agreement and what adoption assistance entails.

#### NEW RULE 3 RENEGOTIATION

This new rule is necessary in order to provide clarity in the renegotiation process and conform with federal guidance in regards to adoption assistance agreements.

#### NEW RULE 4 TERMINATION OF THE ADOPTION ASSISTANCE AGREEMENT

This new rule is necessary to clarify the federal requirements in order for families to continue to receive Title IV-E adoption assistance.

#### NEW RULE 5 ELIGIBILITY REQUIREMENTS

This new rule is necessary to conform with state law and federal guidelines for eligibility for the adoption assistance program.

#### NEW RULE 6 DETERMINATION REVIEW BY CHILD AND FAMILY SERVICES DIVISION ADMINISTRATOR AND FAIR HEARING REQUESTS

This new rule is necessary to set forth the due process rights of those families denied adoption assistance and to conform with federal guidance that requires a hearing in certain situations.

#### NEW RULE 7 SUSPENSION OF ADOPTION ASSISTANCE

This new rule is necessary to set forth recent federal guidance which allows for suspension of adoption assistance for certain reasons.

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### **Small Business Impact**

Pursuant to 2-4-111, MCA, the agency has determined there is no class or group of small businesses affected by the proposed rulemaking and that the proposed rulemaking will not have a significant and direct effect upon small businesses.

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**Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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**Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. 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 emailed, mailed or otherwise delivered to the contact person above.

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**Rule Reviewer**

Kara Nipper

**Approval**

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