



Director Charlie Brereton  
Montana Department of Public Health and Human Services  
111 North Sanders Street  
Helena, MT 59601

20 January 2023

Director Brereton,

The Hopewell Fund<sup>1</sup>, on behalf of its project, Reproductive Telehealth Initiative (referred to as “RHITES” throughout), values the opportunity to comment on the proposed amendment to the Administrative Rules of Montana, Subchapter 37.82.102 and 37.86.104. The Reproductive Health Initiative for Telehealth Equity and Solutions (RHITES) centers equity to bridge gaps in telehealth for reproductive health care through advancements in policy and partnerships. Equity in health care, or “health equity” is achieved when all people are able to reach their full health potential regardless of factors including race, class, gender, sexuality, ability, citizenship status, etc.<sup>2</sup>

RHITES opposes the proposed amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services. Restrictions on Medicaid coverage of abortion target individuals already experiencing health disparities and inequities, including poor people, people of color, and young adults.<sup>3</sup> While these proposed changes undermine access to abortion for pregnant people with low incomes in Montana in several ways, this comment will specifically address the proposed changes to 37.86.104(13), which would essentially eliminate providers’ ability to offer medication abortion via telehealth.

### **The Proposed Amendments would Eliminate Medication Abortion via Telehealth for Medicaid Enrollees**

The proposed amendments to 37.86.104(13)(iii) require the results of a physical examination, including vital signs, heart, lungs, abdomen, extremities, and estimate of gestational age (if

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<sup>1</sup> The Hopewell Fund is a 501(c)(3) public charity that specializes in helping donors, social entrepreneurs, and other changemakers quickly launch new, innovative social change projects. The Hopewell Fund provides fiscal sponsorship and project incubation services that enable donors to begin executing on their vision for social change without having to establish a new nonprofit. Hopewell also fiscally sponsors projects that exist as a legal entity and are ready to begin charitable work, but do not yet have nonprofit status.

<sup>2</sup> <https://www.rhites.org/about>

<sup>3</sup> *Research brief impact of medicaid restrictions - Ibis Reproductive Health*. (n.d.). Retrieved January 17, 2023, from <https://www.ibisreproductivehealth.org/sites/default/files/files/publications/ResearchBriefImpactofMedicaidRestrictions.pdf>



imaging is not available).<sup>4</sup> The consequence of the proposed physical examination requirement for abortion care is effectively a ban on telehealth medication abortion in the state for patients enrolled in Medicaid.

RHITES opposes these proposed amendments because the physical examination requirement is medically unnecessary and the loss of medication abortion via telehealth has a disproportionate impact on rural residents and people with low incomes in Montana. Telehealth can be a powerful tool to address inequities in health care access, but the proposed amendments would limit this option for patients enrolled in Medicaid.

### **A. The Physical Examination Requirement is Medically Unnecessary**

In its Statement of Reasonable Necessity, the Department of Public Health and Human Services (DPHHS) offers that it is “especially important” to have a physical examination when medication abortions are being performed<sup>5</sup>, but provides no evidence to support that assertion. The requirement of a physical exam to determine medical necessity actually goes against FDA guidelines and clinical best practices which allow telehealth services for the provision of medication abortion.<sup>6</sup> There are less invasive and costly methods to estimate gestational age and rule out ectopic pregnancy than in-person physical examinations. Urine pregnancy tests can be done at home to establish the pregnancy.<sup>7</sup> Studies have also shown that people can reliably date their own pregnancies based on their menstrual history.<sup>8</sup> Finally, guidelines on medical abortion by reputable organizations such as the World Health Organization, American College of Obstetricians and Gynaecologists, Society of Obstetricians and Gynaecologists of Canada, and Royal College of Obstetricians and Gynaecologists specifically note that ultrasound to rule out ectopic pregnancy is unnecessary in those without risk factors or symptoms.<sup>9</sup> Given DPHHS’ stated concern for the safety and wellbeing of the patient<sup>10</sup>, it should adhere to global best

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<sup>4</sup> Notice of Public Hearing on Proposed Amendment, In the matter of the amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services. Retrieved January 13, 2023, from <https://dphhs.mt.gov/assets/rules/37-1024pro-arm.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> Bernstein, A. (2021, September 28). Medication Abortion Care Is Safe and Effective—It’s Time Everyone Has Equal Access. The Century Foundation. Retrieved January 17, 2023, from <https://tcf.org/content/report/medication-abortion-care-is-safe-and-effective-its-time-everyone-has-equal-access/>

<sup>7</sup> Gill, R., & Norman, W. V. (2018, February 1). Telemedicine and medical abortion: Dispelling safety myths, with facts. National Institutes of Health. Retrieved January 17, 2023, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5847856/pdf/mh-04-2018.01.01.pdf>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Notice of Public Hearing on Proposed Amendment, In the matter of the amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services. Retrieved January 13, 2023, from <https://dphhs.mt.gov/assets/rules/37-1024pro-arm.pdf>



practices and minimally invasive procedures for patients and eliminate the physical examination requirement.

### **B. Eliminating Medication Abortion via Telehealth Disproportionately Impacts Rural and Low-Income Montanans**

Not only are these physical examinations medically unnecessary, but eliminating telehealth services for abortion will have dire consequences for abortion access. Those consequences will disproportionately affect rural and low-income Montanans. In 2017, some 93% of counties in MT had no abortion clinics and 56% of Montana women<sup>11</sup> lived in those counties.<sup>12</sup> This requirement will disproportionately impact Montanans living in rural areas and those living in the eastern part of the state. Requiring in-person physical exams means that pregnant people who live outside of areas with a provider would either have to travel to one of the few existing clinics, travel out of state, or risk the complications of continuing a pregnancy. According to The Susan Wicklund Fund, on average in Montana, clients travel 400 miles roundtrip for abortion services.<sup>13</sup> Greater distances to abortion facilities are associated with increased burden on patients, including higher out-of-pocket costs for associated services such as food, lodging and child care; lost wages; increased difficulty getting to the clinic; delayed care; and decreased use of abortion services.<sup>14</sup> Research shows that telehealth reduces barriers to care and helps patients access care earlier in pregnancy.<sup>15</sup> Medication abortion via telehealth is critical for patients who might not otherwise be able to receive necessary abortion care because of a lack of provider coverage in their region.

In addition to rural patients, the proposed amendments creating a physical examination requirement disproportionately affect Montanans with low incomes. The purpose of MT

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<sup>11</sup> At RHITES, we strive to be gender-inclusive wherever possible, acknowledging that people of many gender identities need abortions. Following the guidance of The American Board of Obstetrics and Gynecology (ABOG), when describing or referencing study populations used in research, RHITES will use the gender terminology reported by the study investigators.

<sup>12</sup> (2022, June 1). State Facts About Abortion: Montana. Guttmacher Institute. Retrieved January 17, 2023, from <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-montana>

<sup>13</sup> Ehrlick, D. (2022, December 12). Abortion services are hard to access, even if you live in Montana. Daily Montanan. Retrieved January 17, 2023, from <https://dailymontan.com/2022/12/12/abortion-services-are-hard-to-access-even-if-you-live-in-montana/>

<sup>14</sup> Ehrlick, D. (2019, September 1). Induced Abortion in the United States. Guttmacher Institute. Retrieved January 17, 2023, from <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states#>

<sup>15</sup> (2022, March 23). Telehealth for Medication Abortion Care. EMAA Project. Retrieved January 17, 2023, from <https://emaaproject.org/wp-content/uploads/2022/03/Telehealth-for-Medication-Abortion-Care-Fact-Sheet-3.23.22.pdf>



Medicaid is to provide medical assistance for Montanans with low incomes<sup>16</sup>, therefore, requirements that limit access to health care are inherently designed to deny people care based on their ability to pay. The average cost of an abortion is around \$535; even though Medicaid covers the cost of the procedure, that is not the only cost associated with an abortion. Travel costs and lost wages can add hundreds of dollars more to the cost of seeking an abortion. Studies have shown that patients pay ancillary costs that can add up to more than \$400 in transportation, lost wages, child care expenses and more.<sup>17</sup> In total, patients face out-of-pocket costs of almost \$1,000 to afford a first-trimester abortion.<sup>18</sup> For many pregnant people enrolled in Medicaid, the preparations to travel to an in-person appointment can either delay their access to care or put it out of reach entirely. Without insurance coverage, obtaining an abortion would be a significant challenge for the same pregnant people with low incomes who MT Medicaid is supposed to serve. Data from the Turnaway Study found that women who were denied a wanted abortion had four times greater odds of living below the Federal Poverty Level and were also more likely to become unemployed and experience poorer health outcomes for years after the pregnancy.<sup>19</sup> When people cannot access the abortion care that they need, there are lifelong implications, including worsened financial, health and family outcomes.

### **DPHHS Should Promote Health Equity By Eliminating, not Creating, Barriers to Abortion for Medicaid Patients**

RHITES believes that telehealth can be a powerful tool to promote health equity and eliminate barriers to care. Medication abortion via telehealth provides patients with a safe and effective alternative for a time-sensitive procedure and eliminates the cost-related burdens that can impede care. The proposed amendment of ARM 37.82.102 and 37.86.104, specifically the physical examination requirement, would create additional challenges that reinforce and exacerbate existing inequities in abortion access.

RHITES supports Montana Medicaid offering accessible, comprehensive pregnancy care that includes abortion. Patients enrolled in Medicaid and their providers should not face additional

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<sup>16</sup> Montana Medicaid seeks to facilitate access to a set of basic health care benefits for all Montana citizens with a priority for those most in need and create an environment where all recipients take an active role in their individual health care. Retrieved January 17, 2023, from <https://www.benefits.gov/benefit/1633>

<sup>17</sup>A. P. (2022, May 4). How much do abortions cost? For many, it's already too much. CBS News. Retrieved January 17, 2023, from <https://www.cbsnews.com/news/abortion-cost-roe-v-wade-draft-opinion/>

<sup>18</sup> *Id.*

<sup>19</sup> (2022, March 23). Telehealth for Medication Abortion Care. EMAA Project. Retrieved January 17, 2023, from <https://emaaproject.org/wp-content/uploads/2022/03/Telehealth-for-Medication-Abortion-Care-Fact-Sheet-3.23.22.pdf>



burdens to medically necessary abortion care. To ensure that all Medicaid patients are able to access abortion in person or via telehealth, RHITES opposes the proposed amendment of ARM 37.82.102 and 37.86.104 pertaining to Medicaid coverage of abortion services. Instead of making abortion access more difficult, DPHHS should make sure that all residents, regardless of their socioeconomic status or geographic location, are able to access the health care that they need. If you have any questions or concerns, please reach out to Dana Northcraft, RHITES Founding Director, at [dana@rhites.org](mailto:dana@rhites.org).

Sincerely,

Dana Northcraft, Founding Director, RHITES  
Desireé Luckey, Policy Analyst, RHITES