



# Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

## 1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Date of Public Notice	i. Comment Period End Date	
j. Public Comment URL or Email Address:		
k. Program		

\*  By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

## 2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No.  Yes. Please provide the Enrolled Act Numbers and Years Enacted:

## 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.  
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

**4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

**5. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  No.  Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

**6. State Statutory Requirements**

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

Not Applicable.

**7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

**8. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

## CHAPTER 12

### Medicaid Home Health Services

#### Intent to Adopt Rules

#### Statement of Reasons

The Wyoming Department of Health proposes to adopt the following Amended Rule to comply with the provisions of Wyoming Statutes § 42-4-101 through -306, and the Wyoming Administrative Procedure Act at W.S. § 16-3-101 through -115.

Chapter 12 has been adopted to describe the policies related to Medicaid Home Health Services under Wyoming Medicaid.

Medicaid has updated rules related to requiring prior authorization and tightened language regarding covered services and updated the incorporated by reference section to comply with current format requirements. In addition, Medicaid has simplified and streamlined this Chapter to comply with Governor Mead's directive.

## PUBLIC NOTICE

### Intent to Adopt Amended Rule Wyoming Department of Health

Public notice is hereby given that the Wyoming Department of Health Division of Healthcare Financing, Medicaid intends to file Amended Rules pursuant to W.S. § 42-4-101 through -306, and the Wyoming Administrative Procedure Act at W.S. § 16-3-101 through -115. This Amended Rule meets minimum substantive state statutory requirements.

### Rules and Regulations for Medicaid Chapter 12 Medicaid Home Health Services

The Department is promulgating the above-referenced Rules to comply with current Wyoming Medicaid policy and procedure. These Rules will describe Home Health services covered by Wyoming Medicaid, and guidelines for service delivery.

To obtain a copy of these Amended Rules, contact:

Amy Buxton, Provider Services Manager  
Division of Healthcare Financing, Medicaid  
Wyoming Department of Health  
6101 Yellowstone Road, Suite 210  
Cheyenne, WY 82002  
(307) 777-5081  
[amy.buxton@wyo.gov](mailto:amy.buxton@wyo.gov)

A public hearing will be held if requested by 25 persons, by a governmental subdivision, or by an association having not less than 25 members.

The Wyoming Department of Health welcomes all comments and suggestions on proposed amended Rules. Any person may urge the Agency not to adopt this Rule and may request that the Agency state its reasons for overruling the consideration urged against adoption. Written comments must be submitted to the above address no later than 5:00 p.m. on June 19, 2017.

Interested parties may request a statement of the Department's positions regarding each comment and the action taken as a result of the comments prior to, or within thirty (30) days after, adoption of this Rule. Requests must be submitted to the above addresses. If requested, the statement will be issued by the Departments within thirty (30) days after the Agency action.

Dated this 1st day of May, 2017.

Thomas O. Forslund  
Director

## CHAPTER 12

### ~~Rules and Regulations for~~ Medicaid Home Health Services

#### **Section 1. Authority.**

This Chapter is promulgated by the Department of Health pursuant to the Medical Assistance and Services Act at ~~W.S. Wyoming Statutes~~ § 42-4-104~~1~~ through -306 and the Wyoming Administrative Procedure Act at W.S. § 16-3-102~~1~~ through -115.

#### **Section 2. Purposes and Applicability.**

(a) This Chapter establishes the scope of the home health services covered by Medicaid and the methods and standards of reimbursing providers of such services.

~~(b) The requirements of Title XIX of the Social Security Act, 42 C.F.R., Ch. IV, Subch. C, Pt. 440, Subpart A also applies to Medicaid and is incorporated by this reference as of the effective date of this Chapter, and may be cross referenced throughout this Chapter where applicable. This incorporation by reference does not include any later amendments or editions of the incorporated matter. The incorporated rules and regulations may be viewed at <http://www.ecfr.gov/cgi-bin/ECFR> or may be obtained at cost from the Department. The Department may issue Provider Manuals, Provider Bulletins, or both, to providers or other affected parties to interpret the provisions of this Chapter. Such Provider Manuals or Provider Bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in Provider Manuals or Provider Bulletins shall be subordinate to the provisions of this Chapter.~~

~~**Section 3. General Provisions.** This Chapter shall apply to and govern the provision of home health services and reimbursement for those dates of service on or after its effective date.~~

#### Incorporation by Reference.

- (a) For any code, standard, rule or regulation incorporated by reference in these rules:
- (i) The Department of Health has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules.
  - (ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section; and
  - (iii) The incorporated code, standard, rule or regulation is maintained at the Department of Health and is available for public inspection and copying at cost at the same location.

(b) Each item incorporated by reference and is further identified as follows:

(i) Title XIX of the Social Security Act, 42 CFR, Ch. IV, Subch. C, Pt. 440, Subpart A, incorporated as of the effective date of this Chapter which can be found at <http://www.ecfr.gov>.

(ii) Wyoming's Medicaid State Plan, incorporated as of the effective date of this Chapter, which can be found at <http://www.health.wyo.gov/healthcarefin/medicaid/spa.html>.

**Section 4. Definitions.** Except as otherwise defined in Chapter 1 ~~or as defined herein~~, the terminology used in this Chapter is the standard terminology and has the standard meaning used in accounting, health care, Medicaid, and Medicare.

(a) “Attending physician.” means ~~T~~the physician who prescribes home health services or reviews and certifies the plan of treatment. An “attending physician” may not have a significant ownership in or a significant financial or contractual relationship with the provider.

~~(a) “Certification period.” means Tthe period for which a plan of treatment is to be in effect, not to exceed sixty (60) days.~~

(b) “Encounter” means a single episode of care on a date of service during which all ordered services are provided, regardless of length of time, except those that cannot be provided at the time due to medical necessity or specific physician orders to frequency or scheduling, i.e. services ordered “every 12 hours” or “3 times a day”.

(c) “Home health agency.” means ~~a~~A home health agency as defined by 42 C.F.R. § 440.70.

(d) “Home health aide.” means ~~a~~A person that is certified as a nursing assistant/nurse aide by the Wyoming State Board of Nursing, and employed by a home health agency.

(e) “Home health aide service.” means ~~a~~A covered service provided pursuant to a plan of treatment by a home health aide under the supervision of a registered nurse.

(f) “Intermittent.” means ~~T~~three or fewer ~~visits encounters~~ per day for home health aide services ~~and/or skilled nursing services, where each visit does not exceed four hours.~~

(g) “Plan of treatment.” means ~~a~~A written treatment plan prepared on CMS Form 485 (or such other form as may be designated by the Department), which is signed and dated by the client’s attending physician, and which specifies the:

- (i) Client's diagnosis;
- (ii) Objectives of the plan;
- (iii) Client's prognosis;
- (iv) Covered services which are medically necessary for the implementation of the plan ; and
- (v) Person or persons to provide such services or supplies.

(h) "Supplies:" means ~~M~~medical supplies authorized for Medicaid payments under W.S. § 42-4-103 and the Rules and Regulations for Medicaid.

**Section 5. Provider Participation.**

(a) Payments only to providers. No provider that furnishes home health services to a client shall receive Medicaid funds unless the provider is enrolled.

(b) Compliance with Chapter 3. A provider that wishes to receive Medicaid reimbursement for home health services furnished to a client shall meet the requirements of Chapter 3.

**Section 6. Covered Services.**

(a) The services and supplies specified in subsection (b) shall be covered services if:

- (i) Intermittent, ~~unless otherwise authorized by the Department;~~
- (ii) Medically necessary;
- (iii) Ordered by a physician; and
- (iv) Documented in a plan of treatment.

(b) Covered services. The following shall be covered services:

- (i) Skilled nursing services provided by a registered nurse;
- (ii) Home health aide services supervised by a registered nurse;
  - (A) Supervision shall be as follows:
    - (1) The registered nurse shall be available for consultation in person or by telephone; and
    - (2) The registered nurse shall make personal visits to the home:

(I) At least every two (2) weeks if the client is receiving skilled nursing care; or

(II) At least every sixty (60) days if the only services the client is receiving are home health aide services. The supervisory visits shall occur while the aide is furnishing services. Supervisory visits shall not be a covered service.

(B) Each home health aide ~~visit~~ encounter shall include at least one (1) ~~or more~~ of the following personal care services, but must include all ordered services that can be provided in one encounter unless medically indicated otherwise:

- (1) Bath (bed, sponge, tub, shower, or shampooing hair);
  - (2) Nail or skin care (applying lotion to clients shall not constitute personal care);
  - (3) Oral hygiene;
  - (4) Toileting and elimination;
  - (5) Safe transfers/assisted ambulation;
  - (6) Assist with dressing;
  - (7) Assisted range of motion/positioning; and
  - (8) Assisted nutrition or fluid intake (meal set-up, meal preparation, ~~or~~ feeding assistance, or meal/supervision).
- (iii) Physical therapy services provided by a physical therapist;
  - (iv) Speech therapy services provided by a speech therapist;
  - (v) Occupational therapy services provided by an occupational therapist;
  - (vi) Medical social services provided by a social worker.
  - (vii) Disposable supplies provided by a provider in accordance with the plan of treatment.

**Section 7. Excluded Services.** The following shall not be covered services:

- (a) Homemaker services;

- (b) Respite services;
- (c) Home delivered meals;
- (d) Services for clients that are in a hospital or a nursing facility ~~or as provided by federal law~~;
- (e) Services that are inappropriate in the client's home;
- (f) Services that are extensive or for long periods and/or are not cost effective.
- (g) Services where the desired outcome could be better and faster accomplished in another setting;
- (h) Services where the client must be compliant to achieve measured success and the client is not compliant.
- (i) It is inappropriate to break up personal care into multiple episodes for the convenience of the home health agency staff or due to scheduling issues with home health staff.

**Section 8. Prior Authorization.**

- (a) Prior authorization of home health services shall be governed by Chapter 3.
- (b) All home health services require prior authorization. The following services and supplies shall require prior authorization:
  - (i) ~~Any services or supplies provided by a provider located outside the State of Wyoming; and~~
  - (ii) ~~Any services or supplies provided to a client outside the State of Wyoming.~~
- (c) ~~Failure to obtain prior authorization.~~ The failure to obtain prior authorization shall result in the denial of Medicaid payment for the service.
- (d) The provider shall submit the following as part of the prior authorization request. The Department may request additional information as necessary to review the prior authorization.
  - (i) Submission of plan of treatment. The provider shall submit a written request for prior authorization on the forms specified by the Department, including the plan of treatment, before the submission of a claim for such services. The Department may request additional information as necessary to review the plan of treatment.

(A) The plan of treatment shall include a statement that the home health services are appropriate and medically necessary.

(B) The plan of treatment shall be reviewed, signed, and dated by the attending physician at least once every sixty (60) days.

(ii) Face to face visit. All new home health orders must be accompanied by documentation of a face to face visit having occurred between the client and the attending physician (ordering provider) within the ninety (90) days prior to the start of home health services.

(iii) Documentation of Medicare status. For clients eligible under both Wyoming Medicaid and Medicare, documentation from the ordering provider must be included indicating the client is not home-bound and would not qualify for home health services under their Medicare benefits.

(e) Denial of plan of treatment. If a plan of treatment is disapproved, the provider may submit a revised plan of treatment or additional documentation as necessary for the Department to reconsider the plan of treatment.

~~(f) Reauthorization. The physician shall review and recertify the client's plan of treatment at least every sixty (60) days. Recertified plans of treatment shall be subject to the prior authorization provisions of this Section.~~

**Section 9. Medicaid Allowable Payment.** Medicaid reimbursement shall be the lesser of billed charges and the Medicaid allowable payment.

#### **Section 10. Payment of Claims.**

(a) Payment of claims shall be pursuant to Chapter 3.

(b) Providers must bill each date of service on a separate line of the claim. Span billing is not allowed.

**Section 11. Recovery of Overpayments.** The Department may recover overpayments pursuant to Chapter 16.

#### **Section 12. Reconsideration or Administrative Hearing.**

(a) A provider may request that the Department reconsider a decision to recover overpayments. The request for reconsideration, the reconsideration and any administrative hearing shall be pursuant to the provisions of Chapters 16 and 4.

(b) A client may request an administrative hearing pursuant to Chapter 4 regarding the denial of any services or supplies.

**Section 13. Interpretation of Chapter.**

(a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other provision.

(b) The text of this Chapter shall control the titles of its various provisions.

**Section 14. Superseding Effect.** When promulgated, this Chapter supersedes all prior rules or policy statements issued by the Department, including provider manuals and provider bulletins, which are inconsistent with this Chapter.

**Section 15. Severability.** If any portion of this Chapter is found to be invalid or unenforceable, the remainder shall continue in effect.

**CHAPTER 12**  
**Medicaid Home Health Services**

**Section 1. Authority.**

This Chapter is promulgated by the Department of Health pursuant to the Medical Assistance and Services Act at Wyoming Statutes § 42-4-101 through -306 and the Wyoming Administrative Procedure Act at W.S. § 16-3-101 through -115.

**Section 2. Purposes and Applicability.**

(a) This Chapter establishes the scope of the home health services covered by Medicaid and the methods and standards of reimbursing providers of such services.

(b) The Department may issue Provider Manuals, Provider Bulletins, or both, to providers or other affected parties to interpret the provisions of this Chapter. Such Provider Manuals or Provider Bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in Provider Manuals or Provider Bulletins shall be subordinate to the provisions of this Chapter.

**Section 3. Incorporation by Reference.**

(a) For any code, standard, rule or regulation incorporated by reference in these rules:

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(iii) The incorporated code, standard, rule or regulation is maintained at the Department of Health and is available for public inspection and copying at cost at the same location.

(b) Each item incorporated by reference and is further identified as follows:

(i) Title XIX of the Social Security Act, 42 CFR, Ch. IV, Subch. C, Pt. 440, Subpart A, incorporated as of the effective date of this Chapter which can be found at <http://www.ecfr.gov>.

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**Section 4. Definitions.** Except as otherwise defined in Chapter 1, the terminology

used in this Chapter is the standard terminology and has the standard meaning used in accounting, health care, Medicaid, and Medicare.

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(b) “Encounter” means a single episode of care on a date of service during which all ordered services are provided, regardless of length of time, except those that cannot be provided at the time due to medical necessity or specific physician orders to frequency or scheduling, i.e. services ordered “every 12 hours” or “3 times a day”.

(c) “Home health agency” means a home health agency as defined by 42 C.F.R. § 440.70.

(d) “Home health aide” means a person that is certified as a nursing assistant/nurse aide by the Wyoming State Board of Nursing, and employed by a home health agency.

(e) “Home health aide service” means a covered service provided pursuant to a plan of treatment by a home health aide under the supervision of a registered nurse.

(f) “Intermittent” means three or fewer encounters per day for home health aide services or skilled nursing services.

(g) “Plan of treatment” means a written treatment plan prepared on CMS Form 485 (or such other form as may be designated by the Department), which is signed and dated by the client’s attending physician, and which specifies the:

- (i) Client’s diagnosis;
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- (iv) Covered services which are medically necessary for the implementation of the plan; and
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(h) “Supplies” means medical supplies authorized for Medicaid payments under W.S. § 42-4-103 and the Rules and Regulations for Medicaid.

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(2) The registered nurse shall make personal visits to the home:

(I) At least every two (2) weeks if the client is receiving skilled nursing care; or

(II) At least every sixty (60) days if the only services the client is receiving are home health aide services. The supervisory visits shall occur while the aide is furnishing services. Supervisory visits shall not be a covered service.

(B) Each home health aide encounter shall include at least one (1) of the following personal care services, but must include all ordered services that can be provided in one encounter unless medically indicated otherwise:

- (1) Bath (bed, sponge, tub, shower, or shampooing hair);
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- (5) Safe transfers/assisted ambulation;
  - (6) Assist with dressing;
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  - (8) Assisted nutrition or fluid intake (meal set-up, meal preparation, feeding assistance or meal supervision).
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(b) All home health services require prior authorization.

(c) The failure to obtain prior authorization shall result in the denial of Medicaid payment for the service.

(d) The provider shall submit the following as part of the prior authorization request. The Department may request additional information as necessary to review the prior authorization.

(i) Submission of plan of treatment. The provider shall submit a written request for prior authorization on the forms specified by the Department, including the plan of treatment, before the submission of a claim for such services. The Department may request additional information as necessary to review the plan of treatment.

(A) The plan of treatment shall include a statement that the home health services are appropriate and medically necessary.

(B) The plan of treatment shall be reviewed, signed, and dated by the attending physician at least once every sixty (60) days.

(ii) Face to face visit. All new home health orders must be accompanied by documentation of a face to face visit having occurred between the client and the attending physician (ordering provider) within the ninety (90) days prior to the start of home health services.

(iii) Documentation of Medicare status. For clients eligible under both Wyoming Medicaid and Medicare, documentation from the ordering provider must be included indicating the client is not home-bound and would not qualify for home health services under their Medicare benefits.

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**Section 13. Interpretation of Chapter.**

(a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other provision.

(b) The text of this Chapter shall control the titles of its various provisions.

**Section 14. Superseding Effect.** When promulgated, this Chapter supersedes all prior rules or policy statements issued by the Department, including provider manuals and provider bulletins, which are inconsistent with this Chapter.

**Section 15. Severability.** If any portion of this Chapter is found to be invalid or unenforceable, the remainder shall continue in effect.

**Section 16. Incorporation by Reference.**

(a) For any code, standard, rule or regulation incorporated by reference in these rules:

(i) The Department of Health has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules.

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section; and

(iii) The incorporated code, standard, rule or regulation is maintained at the Department of Health and is available for public inspection and copying at cost at the same location.

(b) Each rule incorporated by reference and can be found at <http://soswy.state.wy.us/rules/> and is further identified as follows:

(i) Referenced in Section 1 is Wyoming Medicaid Rule, Chapter 1 – Definitions, adopted by the Department of Health and effective on November 7, 2011.

(ii) Referenced in Sections 5, 8, and 10 is Wyoming Medicaid Rule, Chapter 3 – Provider Participation, adopted by the Department of Health and effective on December 16, 1998.

(iii) Referenced in Section 12 is Wyoming Medicaid Rule, Chapter 4 – Administrative Hearings, adopted by the Department of Health and effective on November 7, 2011.

(iv) Referenced in Sections 11 and 12 is Wyoming Medicaid Rule, Chapter 16 – Program Integrity, adopted by the Department of Health and effective on November 7, 2011.

(v) Referenced in Section 2 is Title XIX of the Social Security Act, 42 CFR, Ch. IV, Subch. C, Pt. 440, Subpart A, incorporated as of the effective date of this Chapter and can be found at <http://www.ecfr.gov>.

(vi) Referenced in Section 4 is 42 CFR § 440.70, incorporated as of the effective date of this Chapter and can be found at <http://www.ecfr.gov>.