



## Children, Families, Health, and Human Services Interim Committee

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### 65th Montana Legislature

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FONG HOM, Secretary

June 14, 2017

TO: Children, Families, Health, and Human Services Interim Committee  
FROM: Alexis Sandru, Staff Attorney  
RE: Administrative Rule Report for June 2017 Meeting

Since January 1, 2017, the Department of Public Health and Human Services (Department) has filed the following notices with the Secretary of State for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

### PROPOSAL NOTICES

#### **MAR Notice Number:** 37-779

**Subject:** Addition of contact lens benefit to the HELP plan evidence of coverage document

**Summary:** The Department is proposing to revise the HELP plan evidence of coverage document (EOC) as follows:

- adding a contact lens benefit for individuals who have certain diagnoses;
- adopting Medicaid language to describe pharmacy benefits;
- updating the definitions of habilitative care, rehabilitative care, physical therapy, occupational therapy, and speech therapy;
- updating the first level appeal description to include a phone number and fax number; and
- updating the abortion exclusion language to align with the current program.

The Department estimates that the proposed amendment will have an estimated cost of \$896.05 per year and will affect 8 HELP plan participants annually.

**Notes/Hearing:** A public hearing is scheduled for June 15, 2017, at 2:30 p.m., in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on June 23, 2017.

\*\*Emailed agency rule reviewer regarding the adequacy of the statement of reasonable necessity. Additional rationale was inadvertently omitted. The Department will publish an amended proposal notice describing the rationale for the proposed action.

#### **MAR Notice Number:** 37-790

**Subject:** Amend Healthy Montana Kids (HMK) dental benefit program procedures

**Summary:** The Department is proposing to amend the HMK dental benefit procedure codes and descriptions from the 2016 version to the 2017 version, which includes the addition of codes for caries susceptibility tests, nutritional counseling, and oral hygiene instructions. The Department

states that the proposed amendment "is necessary because the federal Centers for Medicare and Medicaid Services' (CMS) approved state plan for HMK dental benefits utilizes the State of Montana Employee Dental Benefit as a benchmark. The provider of that benefit, Delta Dental, adopted use of the 2017 CDT in January 2017, which includes procedure code updates, code additions and deletions, or changes to existing code descriptions from the 2016 CDT. The department subsequently examined the 2017 CDT and recommends adoption of the same in order to maintain compliance with the CMS-approved state plan for HMK dental benefits. The HMK/CHIP dental benefit plan will include access to baby and child dentistry (ABCD) codes for qualified providers. Failure of the department to timely adopt the 2017 CDT may adversely impact the department's federal funding requirements and its operation of the HMK dental benefit program."

The Department does not anticipate any fiscal impact resulting from the proposed amendment and estimates that the proposed amendment may affect 506 dental providers and 19,191 HMK members.

Notes/Hearing: A public hearing is scheduled for June 15, 2017, at 1:30 p.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on June 23, 2017.

**MAR Notice Number: 37-791**

Subject: Revision of Medicaid outpatient drug reimbursement amounts

Summary: The Department is proposing to change how Medicaid enrolled pharmacies that fail to respond to the dispensing fee questionnaire are reimbursed and to clarify how provider pharmacies are reimbursed for hemophilia drugs.

The Department anticipates that the proposed revisions will result in an increase of \$19,892 in minimal dispensing fees and will potentially affect 169,451 Medicaid members and 281 enrolled pharmacies.

Notes/Hearing: A public hearing was held on May 19, 2017, and public comment was due on May 26, 2017.

**MAR Notice Number: 37-792**

Subject: Establishment of collaborative practice drug therapy management

Summary: The Department is proposing to establish a collaborative practice drug therapy management program in the Montana Medicaid plan in order to reimburse clinical pharmacist practitioners who provide face-to-face, direct patient care to Medicaid members who have at least one chronic condition needing at least one maintenance medication.

The Department anticipates that the projected cost of the program will be offset by the savings and that the proposed action will affect 13 providers and 851 Medicaid members.

Notes/Hearing: A public hearing was held on May 19, 2017, and public comment was due on May 26, 2017.

**MAR Notice Number: 37-793**

Subject: Establishment of promising pregnancy care program

Summary: The Department is proposing to establish a group prenatal care program known as

Promising Pregnancy Care (PPC) for pregnant members of Montana Medicaid, HMK, HMK Plus, and the HELP plan. PPC provides members with information regarding nutrition, healthy lifestyle, breastfeeding, body changes in pregnancy, stress, family planning, labor education, newborn care, preventing shaken baby syndrome and SIDS, and postpartum care. Members will also participate in group classes and must engage in self-care activities. The Department anticipates that the program will have a fiscal impact of \$42,000 in fiscal year 2018 and will impact 45 federally qualified health centers, 28 rural health centers, 330 physicians, and 69,947 Medicaid members.

In addition, the Department is proposing to amend ARM 37.86.4412, which pertains to reimbursement for rural health clinics and federally qualified health centers, by allowing an enhanced prospective payment system rate for approved clinics and centers that participate in PPC. The Department is also proposing to amend the rule to allow a separate reimbursement for long-acting reversible contraceptives. The Department anticipates that the amendment will be budget neutral.

Notes/Hearing: A public hearing was held on June 1, 2017, and public comment was due on June 9, 2017.

\*\*Emailed agency rule reviewer regarding the adequacy of the statement of reasonable necessity.

**MAR Notice Number:** 37-794

Subject: Physician program updates

Summary: The Department is proposing amendments to:

- remove all references to the Primary Care Enhanced Payment Program because the program ended June of 2015;
- update and clarify the methods in which physician administered drugs and vaccines are priced;
- update approved forms on which to submit claims;
- change references from "birth attendant" to "direct entry midwife" in order to clarify covered services, reimbursement, and the location at which services can be performed; and
- update the physician related services manual.

The Department anticipates no fiscal impact.

Notes/Hearing: A public hearing is scheduled for June 15, 2017, at 11 a.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on June 23, 2017.

**MAR Notice Number:** 37-796

Subject: Revision of early and periodic screening, diagnostic and treatment benefits

Summary: The Department is proposing to amend EPSDT rules to reflect current practices and current resources, including:

- providing that the number and timing of screenings should follow the American Academy of Pediatrics Bright Futures schedule;
- providing that caregiver depression screenings are covered for caregivers of children under age 1 and that positive screenings should be referred for follow-up care; and

- requiring that there must be documented medical necessity by a child's primary care provider for a child to receive chiropractic services and requiring that the treatment be directly related to a neuromuscular diagnosis of the spine.

Notes/Hearing: A public hearing is scheduled for June 15, 2017, at 3:30 p.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on June 23, 2017.

**MAR Notice Number:** 37-797

Subject: Sole-source provider for the purchase of breast pumps

Summary: The Department is proposing to amend reimbursement requirements for durable medical equipment to require that purchased breast pumps be paid by the department through a single-volume purchase contract. The Department estimates that the amendment will affect 3 enrolled small business durable medical equipment providers and that the reimbursement to these providers will be reduced by an estimated average of \$268.75 in total funds. The Department estimates that the amendment has a fiscal impact to state general fund of \$173,671 and that the amendment will affect 69,947 members and 9 providers.

Notes/Hearing: A public hearing is scheduled for June 29, 2017, at 1:30 p.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on July 7, 2017.

**MAR Notice Number:** 37-798

Subject: Changes to children's mental health bureau non-Medicaid services provider manual

Summary: The Department is proposing the following revisions to the Children's Mental Health Bureau non-Medicaid services provider manual:

- setting the eligibility limit for room and board account funding and system of care account funding to provide that youth whose families have countable family income above 275% FPL will no longer be eligible for the funding and clarifying that youth must be enrolled in HMK/Medicaid and under 18 years of age to be eligible for system of care account funding;
- requiring that youth enrolled in HMK/CHIP have a therapeutic services authorization for therapeutic group home from HMK's third-party administrator; and
- clarifying permissible uses for non-Medicaid funding.

Notes/Hearing: A public hearing is scheduled for June 29, 2017, at 2:30 p.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on July 7, 2017.

## **ADOPTION NOTICES**

**MAR Notice Number:** 37-766

Subject: Removal of dental orthodontia service lifetime limits in Medicaid dental services

Summary: The Department proposed to remove language that limits payment for orthodontia services to an overall lifetime cap of \$7,000 for interceptive and full band orthodontia phases. No fiscal impact was anticipated.

Notes/Hearing: A public hearing was held on August 25, 2016. No public comment or testimony was received. The Department amended the rule as proposed.

**MAR Notice Number:** 37-775

Subject: Periodic update of administrative rules related to the reporting and control of communicable disease

Summary: The Department proposed changes to the Montana communicable disease control administrative rules in order to keep the rules current with changing national notifiable disease surveillance investigation and control recommendations. The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on February 23, 2017. Outside of correcting discrepancies noted in public comment, the Department adopted the changes as proposed.

**MAR Notice Number:** 37-776

Subject: Update direct care wage effective dates and reimbursement updates to January 1, 2017

Summary: The Department proposed to update rules pertaining to direct care worker wage reporting periods and lump sum payments for increases in direct care workers' wages to reflect the current calendar year.

Notes/Hearing: No public hearing was held. No public comment or testimony was received. The Department amended the rules as proposed.

**MAR Notice Number:** 37-778

Subject: Update of child support enforcement rules

Summary: The Department proposed multiple changes to Title 37, chapter 62, ARM, as part of the Department's periodic review of the chapter, including but not limited to:

- aligning administrative rule with a recent Montana Supreme Court opinion regarding credit reporting and the distinction between acknowledged child support arrearages and bad debt owed to CSED;
- simplifying the Department's fee schedule rule for child support;
- repealing rules that conflicted with statute; and
- amending rules that reflected outdated technology and processes.

Notes/Hearing: A public hearing was held on December 15, 2016. No public comment or testimony was received. The Department amended and repealed the rules as proposed.

**MAR Notice Number:** 37-780

Subject: Revision of Medicaid cost share

Summary: The Department proposed to amend Medicaid cost share requirements in order to align the rule with existing practice by eliminating cost sharing charges for home dialysis attendant services, personal assistance services, and targeted case management services.

Notes/Hearing: A public hearing was held on November 30, 2016. The Department received one comment concerning exempting all mental health clinic expenses from cost sharing requirements but amended the rule as proposed.

**MAR Notice Number: 37-781**

Subject: Creation of senior farmers' market nutrition program

Summary: Since 2006, Montana has been involved in the senior farmers' market program, which is funded by grants from the United States Department of Agriculture. The proposed rules are the result of a 2013 audit that found that the Department was out of compliance with certain federal requirements. The proposed new rules establish the purpose, definitions, eligibility determination procedures, and appeal and fair hearing processes for participants, farmers, and local agencies involved in the senior farmers' market program in order to comply with federal requirements.

Notes/Hearing: A public hearing was held on March 30, 2017. No public comment or testimony was received. The Department adopted the rules as proposed.

**MAR Notice Number: 37-783**

Subject: Hospice reimbursement

Summary: The Department proposed to update its Medicaid hospice reimbursement fee schedule, effective October 1, 2016, which would result in an approximate, aggregate reimbursement rate increase of 2.1% for providers in all 56 counties. Four hospice providers will experience a rate decrease of 2% for failure to comply with federal quality data submission requirements; however, 2 of these providers are no longer active Medicaid hospice providers.

Notes/Hearing: A public hearing was held on January 26, 2017. No public comment or testimony was received. The Department amended the rule as proposed.

**MAR Notice Number: 37-784**

Subject: Specifying the location of minimum scheduled face-to-face contacts within a home and community environment

Summary: The Department proposed to amend home support services and therapeutic foster care provider requirements to specify that minimum face-to-face contacts must be held within the home and community environment, excluding an office or facility. Services that are provided above the minimum face-to-face contacts may be held in an office or facility that is sufficient to meet the needs of the youth.

Notes/Hearing: A public hearing was held on March 9, 2017. The Department received numerous comments and adopted the proposed amendment with the clarification that only a provider's office is excluded.

**MAR Notice Number: 37-785**

Subject: Clarifying the definition of severe disabling mental illness (SDMI)

Summary: The Department proposed to clarify that the definition of SDMI includes a person who meets the functional impairment requirements described in administrative rule and who has:

- been involuntarily hospitalized due to a mental disorder at the Montana State Hospital within the past 12 months;
- had recurrent suicidal ideation within the past 12 months;
- a history of suicide attempts or a specific plan for completing suicide; or
- a primary diagnosis described in administrative rule.

Notes/Hearing: A public hearing was held on March 30, 2017. The Department received several comments and amended the rule as proposed.

**MAR Notice Number:** 37-786

Subject: Healthcare effectiveness data and information set (HEDIS) measures

Summary: The Department proposed to amend ARM 37.108.507, which requires health carriers to report their quality assessment activities to the department using HEDIS measures, to require that the 2017 HEDIS measures be used in order to reflect the current year's measures and ensure that national comparisons are possible.

Notes/Hearing: No public hearing was held. The Department received one comment that was outside the scope of the rule and amended the rule as proposed.

**OTHER**

**MAR Notice Number:** 37-769

Subject: Annual training requirements for child care facilities

Summary: The Department proposed amendments to training requirements, staffing qualifications, and provider responsibilities for child care facilities.

Notes/Hearing: A public hearing was held on October 13, 2016. Following review of public comment, the Department decided to withdraw the proposal notice and to work with providers and department staff to publish a new proposal notice.

**MAR Notice Number:** 37-782

Subject: SURS program integrity activities to prevent, identify, and recover erroneous Medicaid payments as outlined under federal or state law

Summary: The Department proposed to adopt rules to inform the public of its SURS program-integrity activities and to provide an opportunity for public comment.

Notes/Hearing: A public hearing was held on March 9, 2017. Following the passage of Senate Bill 82 (2017), which provides standards and requirements for Medicaid overpayment audits, the Department withdrew the proposed rules.