



Children, Families, Health, and Human Services Interim Committee

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65th Montana Legislature

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June 11, 2018

To: Children, Families, Health, and Human Services Interim Committee
From: Alexis Sandru & Julie Johnson, Staff Attorneys
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 9 through 11 (2018)

The Children, Families, Health, and Human Services Interim Committee is responsible for reviewing administrative rules promulgated by the Department of Public Health and Human Services (DPHHS) and the entities attached to DPHHS for administrative purposes for compliance with the Montana Administrative Procedure Act. At its June 2017 meeting, the Committee elected to receive bimonthly e-mails from staff that summarize DPHHS rulemaking activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the Committee's May 2018 meeting.

PROPOSAL NOTICES

MAR Notice Number: 37-840

Subject: Medicaid outpatient drug services

Summary: The Department is proposing to amend rules pertaining to Medicaid outpatient drug services in order to correct citations cross-referenced in the rules and to provide that *all* pharmacy providers (ARM currently refers to "[in-state] pharmacy providers") that are new to the Medicaid program are assigned the maximum dispensing fee until a dispensing fee questionnaire can be completed for six months of operation. The Department states that this amendment is necessary to comply with the approved pharmacy state plan.

The Department does not anticipate any fiscal impact with the proposed amendments and anticipates that the amendments will be effective July 1, 2018.

Notes/Hearing: A public hearing was held on May 31, 2018. Public comment was due on June 8, 2018.

MAR Notice Number: 37-842

Subject: Hospice reimbursement and updates

Summary: The Department is proposing the following amendments pertaining to hospice:

- specifying that an original or copy of a notice of election must be filed for Medicaid hospice services within 5 calendar days of the start of Medicaid hospice services (ARM currently provides that the notice must be filed with the Department within 5 calendar days after the effective date of the election statement); and
- updating the hospice fee schedule, effective October 1, 2017. The Department states that the proposed amendment is in accordance with changes in the federal hospice

reimbursement rates set by CMS and that the proposed fee schedule implements an approximate aggregate reimbursement rate increase of 1%, which equals approximately \$53,000. The Department notes that hospice rates are affected by a wage index applied geographically by county. All Montana counties except for Missoula (2.2% decrease) and Cascade (20.9% decrease) counties experienced an increase in the wage index. Cascade and Missoula counties will experience a reduction in hospice reimbursement rates.

Notes/Hearing: A public hearing was held on May 31, 2018. Public comment was due on June 8, 2018.

MAR Notice Number: 37-843

Subject: Durable medical equipment (DME) -- nursing facility services

Summary: The Department notes that in February 2016, CMS revised federal regulations to require that state Medicaid programs pay for DME supplied to nursing facility residents out of the Medicaid nursing facilities program rather than from the DME program. The proposed amendments provide that DME supplied to nursing facility residents will no longer be paid through the DME program and will now be paid from the nursing program. The Department is also proposing amendments to reflect the Department's policy that Medicaid does not cover powered wheelchairs for nursing facility residents and to amend the definition of DME to include equipment and supplies for use in any setting in which normal life activities take place (ARM currently refers to a patient's home, residence, school, or workplace).

The Department states that a fund transfer will take place between DME and nursing home services and anticipates no fiscal impact.

Notes/Hearing: A public hearing was held on May 31, 2018. Public comment was due on June 8, 2018. **Implementing cites contain citation to statute that has been repealed. Emailed agency rule reviewer.

MAR Notice Number: 37-844

Subject: Amendment of Healthy Montana Kids (HMK)

Summary: The Department is proposing the following revisions to the HMK health care benefit plan:

- removing the limits on the extended mental health benefit;
- moving administration of the community-based psychiatric rehabilitation and support benefit from the Medicaid fiscal agent to the HMK third-party administrator;
- eliminating prior authorization for dental anesthesia and implants and clarifying the dental anesthesia benefit;
- removing the exclusion for transgender services; and
- providing contact information for the ambulance benefit administration.

The Department anticipates that removing the limits on the extended mental health benefit will cost the Department \$164,187 annually and that the remaining changes will not have an impact to the state general fund. The Department intends to apply the amendments retroactively to November 1, 2017.

Notes/Hearing: A public hearing is scheduled on June 14, 2018, at 10 a.m. in Room 207 of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5

p.m. on July 6, 2018.

MAR Notice Number: 37-845

Subject: Nursing facility reimbursement rates for SFY 2019

Summary: The Department is proposing an increase of 6.34% in nursing facility provider rates for SFY 2019 and is proposing to repeal a rule that applies to rates between January 1 and June 30, 2018. The Department intends for the rule amendments and repeal to be effective July 1, 2018.

Notes/Hearing: A public hearing is scheduled on June 14, 2018, at 3 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 22, 2018.

MAR Notice Number: 37-851

Subject: Updating Medicaid fee schedules and effective dates -- private duty nursing

Summary: The Department is proposing to increase private duty nursing fees as follows:

- \$8.95 per 15 minutes of care by a licensed practical nurse (currently reimbursed at \$7.38 per 15 minutes of care); and
- \$11.28 per 15 minutes of care by a registered nurse (currently reimbursed at \$8.69 per 15 minutes of care).

The Department intends for the changes to go into effect July 1, 2018. The expected fiscal impact is \$393,600.02 in state general fund and \$764,730.14 in federal funding (Health Resources Division) and \$8,411 in state general fund and \$16,344 in federal funding (Addictive and Mental Disorders Division).

Notes/Hearing: A public hearing is scheduled on June 28, 2018, 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 6, 2018.

OTHER NOTICES

MAR Notice Number: 37-811

Subject: Child care facilities

Correction Notes: The Department has corrected renumbering in an amended rule.

MAR Notice Number: 37-831

Subject: Update of the supplemental nutrition program for women, infants, and children (WIC)

Summary: The Department proposed to update administrative rules pertaining to WIC in order to:

- reflect changes that benefits are issued electronically; and
- update terminology, citations, and the locations of certain materials adopted and incorporated by reference.

The Department did not anticipate any fiscal impact with the proposed amendments.

Notes/Hearing: A public hearing was held on May 18, 2018. **Emailed agency rule reviewer re: the location of the 2018 State Plan for Montana's Special Supplemental Nutrition Program for

Women, Infants and Children (WIC), which is adopted and incorporated by reference in the proposal notice. Location is required under 2-4-307(2), MCA.

Notes: The Department filed notice that it will not proceed with this rulemaking at this time.

ADOPTION NOTICES

MAR Notice Number: 37-836

Subject: Discontinuance of the supplemental disproportionate share hospital (DSH) payment

Summary: The Department proposed amendments to discontinue the supplemental DSH payments and to increase hospital reimbursement adjustor (HRA) supplemental payments. The Department explained that by discontinuing the DSH payment and increasing the HRA supplement payments to in-state hospitals, it can leverage funds generated as result of increased federal medical assistance (estimated to be \$2.3 million for SFY 2018) and use those funds for HRA supplemental payments. The HRA payments will be distributed using a formula based on utilization among 61 in-state hospitals. The Department intended for the rules amendment to apply retroactively to March 6, 2018.

Notes/Hearing: A public hearing was held on April 5, 2018. At the request of the Montana Hospital Association, the Department extended the public comment period to May 4, 2018.

Adoption Notice Notes: The Department received one comment in support of the 2-year suspension of the DSH payment. The commenter also requested that the Department re-evaluate the policy after fiscal year 2019 to determine if funding can be restored. The Department amended the rules as proposed. The amendments are effective retroactively to March 6, 2018.

MAR Notice Number: 37-838

Subject: Update Medicaid fee schedules with Medicare rates -- update effective dates

Summary: The Department proposed to revise fee schedules, effective dates, rates, and references to incorporate the annual relative value unit updates from CMS and to revise conversion factors for various providers. The Department proposed to remove overnight supports and companion services from the 1915(c) HCBS SDMI waiver fee schedule because overnight supports has never been used and companion services has only been used minimally. The Department proposed to require prior authorization of partial hospital for youth with an SED and to remove the requirement that a youth must be at least 2 years old to receive outpatient therapy. The Department proposed to remove the billing code in SLTC for independence advisor services and make it unusable for billing purposes, which the Department stated is necessary because the only provider has given notice that it will no longer provide the services, and the Department will be providing the services.

The Department listed the providers affected and the various fiscal impacts in detailed tables in the proposal notice.

Notes/Hearing: A public hearing was held on May 17, 2018. Public comment was due on May 25, 2018.

Adoption Notice Notes: The Department received several comments, including:

- a comment that optometrists should be reimbursed at the same rate as doctors of medicine and doctors of osteopathy;

- comments that reimbursements for private duty nursing services are inadequate (see 37-851 above, which proposes to increase reimbursements);
- a comment asking whether reimbursement rates for substance abuse providers are reinstated;
- a comment noting that the July 1, 2018, fee schedule for home and community-based services was not available. The Department acknowledged this and withdrew the proposed amendment concerning that fee schedule.

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