



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

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### 65th Montana Legislature

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March 9, 2018

To: Children, Families, Health, and Human Services Interim Committee  
From: Julie Johnson, Staff Attorney  
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 1 through 4

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 January 2018 meeting.

### PROPOSAL NOTICES

#### **MAR Notice Number:** 37-800

Subject: Expanding the Children's Special Health Services

Summary: The amendment raises the Healthy Montana Kids current federal poverty income level from 261% to 300% to qualify certain Montana families for assistance.

Notes/Hearing: A public hearing is not currently scheduled. If three or more people who are directly affected by the change request a hearing, a hearing will be scheduled. Public comment is due by 5 p.m. on March 9, 2018.

#### **MAR Notice Number:** 37-824

Subject: Updating Residential Treatment Facilities Rules

Summary: The amendment adopts and incorporates by reference the 2017 Comprehensive Accreditation Manual for Behavioral Health Care and clarifies requirements in licensure rules for medical staff that is on call at all times, require 24-hour nursing staff on site, and meet the education requirements of each youth. The changes are necessary to ensure compliance with CFR requirements and remain consistent with state Medicaid requirements.

Notes/Hearing: A public hearing was scheduled for March 1, 2018. Public comment is due March 9, 2018.

#### **MAR Notice Number:** 37-832

Subject: Increasing Laboratory Fees

Summary: The amendment increases fees and the schedule of new fees may be accessed at:

<http://dphhs.mt.gov/publichealth/LaboratoryServices/PublicHealthLabTesting>. Certain fees will increase between 15 and 20 percent. The proposed fees will be comparable to those of other laboratory service providers in those instances where competitive services exist.

Notes/Hearing: A public hearing was not scheduled. Public comment is due March 9, 2018.

**MAR Notice Number:** 37-833

Subject: Passport to Health Program Updates - Repeal of Health Improvement Program Rules

Summary: The proposed amendments, which would become effective April 1, 2018 will eliminate the Health Improvement Program (HIP). The department is expanding the Patient Centered Medical Home model and intends to transition HIP to the new Complex Care Management Program. The changes are a result of the special session and the 17-7-140 cuts. The amendments will result in a savings of \$3.3 million in FY 2018 and \$6.6 million in FY 2019.

Notes/Hearing: A public hearing was currently scheduled for March 2, 2018. Public comment is due March 9, 2018.

**MAR Notice Number:** 37-835

Subject: Adult Mental Health and Substance Use Disorder -- Repeal

Summary: This is a very lengthy set of amendments. The department is proposing to adopt and incorporate into administrative rule a provider manual titled "Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder. It also is proposing to repeal several rules regarding substance use disorders services and services for adults with severe disabling mental illness and mental health services for adults.

The department is also proposing to add utilization management to the following covered services:

- (1) acute inpatient hospital services for out-of-state facilities will continue to require prior authorization;
- (2) intensive community based rehabilitation (ICBR), program for assertive community treatment (PACT), and therapeutic group home (TGH) will now require prior authorization and continued stay reviews;
- (3) secure crisis diversion, also known as crisis intervention facility, will continue to require continued stay reviews, however the timeline will change from seven days to five days;
- (4) community based psychiatric rehabilitation and supports (CBPRS) will implement a limit of two hours per day (eight units per day);
- (5) targeted case management (TCM) will implement a limit of 24 hours per state fiscal year (96 units per state fiscal year);
- (6) Outpatient (OP) therapy more than 12 sessions for individual therapy and 12 sessions of group therapy will require the member to have either a severe disabling mental illness (SDMI) or substance use disorder (SUD) for OP therapy more than 12 sessions diagnosis.
- (7) SUD medically monitored intensive inpatient, SUD clinically managed high-intensity residential, and SUD clinically managed low-intensity residential will now require prior authorization and continued stay reviews.

The department proposes to make the following amendments to the current SDMI definition to update the diagnosis code for obsessive compulsive disorder, and to add codes for generalized anxiety disorder, dissociative disorder, persistent depressive disorder (dysthymia), feeding and eating disorders, and gender dysphoria. The department proposes to remove the diagnosis code for schizophrenia (undifferentiated type) because unspecified/undifferentiated diagnoses are not reimbursable by Montana Medicaid.

The department is also proposing to implement a level of impairment worksheet (LOI). This is necessary to provide a consistent means to determine the level of impairment of a member. Providers will be required to complete this worksheet when determining the SDMI eligibility of a member. The SDMI eligibility of a member must be determined annually.

The department is proposing to amend several ARMs to align with current practices as outline in The American Society of Addiction Medicine (ASAM). In its Statement of Reasonable Necessity, the department states:

"The proposed Manual includes the addition of utilization management to select services. Historically, there has been no utilization management requirements for these services; therefore, any fiscal impact is unquantifiable. The department lost approximately one-eighth of its Medicaid appropriation for the biennium and although this decrease was specified for targeted case management, the department has chosen to retain this service and instead, instituting utilization management to achieve those cost savings over the last 15 months of the biennium." (Emphasis added).

Notes/Hearing: A public hearing was scheduled for March 1, 2018. Public comment is due March 9, 2018.

**MAR Notice Number:** 37-830

Subject: Foster Care Licensing Requirements

Summary: The department is proposing amendments that do the following:

- allow for the approval of two-year licenses following an initial license, which includes completion of the pre-service training and the first year training modules and also allows the agency to limit licenses to one year as needed for specific families
- require child protection services checks be obtained from every state in which an applicant or adults in their household have resided in for the past five years to create a timelier process of application for foster care, adoption and guardianship by more closely adhering to federal requirements for the process
- reduce required number of training hours for resource families being approved as regular youth foster homes (including kin) from 18 hours of training prior to being licensed to 8 hours

Notes/Hearing: A public hearing is scheduled for March 15, 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 March 23, 2018.

## ADOPTION NOTICES

### **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 three 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 the state general fund of \$173,671 and that the amendment will affect 69,947 members and 9 providers.

Notes/Hearing: A public hearing was held on June 29, 2017. The deadline for public comment was extended to December 1, 2017.

*Adoption Notice Notes:* The department received four comments. All four comments were concerns, which included concerns about: 1) a single source contract ensuring member access, 2) how providers who offer rentals would be impacted; and 3) a contract being awarded to an out-of-state provider. The department considered and responded to the comments and amended the rules as proposed.

### **MAR Notice Number:** 37-814

Subject: Amendment of immunization requirements for child care facilities and foster homes

Summary: The department is proposing to amend rules regarding youth foster homes to require that all children residing in the foster home other than the foster child and all children attending Montana day care facilities be immunized in accordance with the current recommendations of the Advisory Committee on Immunization Practices of the U.S. Public Health Service (ACIP) unless the immunization is medically contraindicated and to provide for a standardized method of recordkeeping for the immunization histories. The department is proposing to amend child care facility rules to bring staff immunization standards in line with current ACIP recommendations and to provide for exceptions when the immunization is medically contraindicated or when there is evidence of immunity. The department is proposing to repeal an existing administrative rule pertaining to school-age immunization requirements for youth foster homes because the amendments proposed in the notice make the rule unnecessary.

Notes/Hearing: A public hearing was held on December 4, 2017. Public comment was due on December 12, 2017.

\*\*Emailed agency re: erroneous citation in authorizing statute -- statute has been renumbered.

*Adoption Notice Notes:* The department received four comments. DPHHS agreed with the comment that "by 12 years of age" should be changed to "by 11 years of age". The department did not agree that the rotavirus vaccine be added as a required vaccine for daycare. The department disagreed with another comment that the number of booster doses required were fewer than recommended by the ACIP. The department responded to a comment to clarify that the rules do allow for a four-day grace period for shots given prior to a child's first birthday. The department adopted the rules as proposed except for the change from 12 to 11.

**MAR Notice Number: 37-818**

Subject: Direct care wage effective dates

Summary: ARM 37.40.422, titled "Direct Care and Ancillary Services Workers' Wage Reporting/Additional Payments Including Lump Sum Payments for Direct Care and Ancillary Services Workers' Wage and Benefit Increases," currently contains direct care and ancillary workers' wages reporting requirements for swing bed hospitals that are "[effective] for the period of January 1, 2017 through December 31, 2017." The department is proposing to amend the language to state "calendar year January through December" so that the department does not have to update administrative rules each year. Similarly, the department is proposing to amend current language that requires the department to determine lump sum payments "January 1, 2017" to "January 1 of the calendar year" to avoid having to update the administrative rule each year.

Notes/Hearing: A public hearing was held on November 29, 2017. Public comment was due on December 7, 2017.

*Adoption Notice Notes:* The department received no public comment and amended the rule as proposed.

**MAR Notice Number: 37-811**

Subject: Adoption, amendment, and repeal of rules pertaining to the federal Child Care and Development Block Grant Reauthorization Act, disaster and emergency planning, and health and safety requirements for child care facilities

Summary: The department is proposing to adopt four new rules, amend multiple existing rules, and repeal several rules pertaining to child care facilities. The department states that the Child Care and Development Block Grant Reauthorization Act has directed states to implement new requirements, which focus on child care health and safety and quality of care, in order to receive continued funding. Montana's implementation date is February 2018. The proposed new rules:

- require facilities to have emergency procedures and evacuation plans in place;
- require that early childhood teachers complete teacher orientation within certain time frames;
- set forth director qualifications and responsibilities; and
- outline group and family child care staffing qualifications and responsibilities.

The proposed amendments include but are not limited to:

- revising terminology;
- providing for annual inspections of child care facilities;
- providing requirements for handling and storing hazardous materials;
- providing requirements for the prevention of and response to food and allergic reactions;
- providing requirements for maintaining injury reports; and
- providing requirements about electrical hazards.

The department is also proposing to repeal several rules on the basis that they are repetitive of existing or proposed rules. The department anticipates no fiscal impact and states that small businesses will not be significantly and directly impacted.

Notes/Hearing: A public hearing was held on December 15, 2017. Public comment was due on December 22, 2017.

Adoption Notice Notes: The department received much public comment (35 separate comments and responses) and amended some of the rules as proposed and made changes from the original proposal.

\*\*Emailed agency re: erroneous citations in imp/auth statutes.

**MAR Notice Number:** 37-820

Subject: Amendment, repeal, and adoption of rules pertaining to the Montana medical marijuana program

Summary: The department is proposing to adopt new rules for the Montana medical marijuana program, including rules that: (1) establish the purpose of the program; (2) specify the procedures for denying applications to become cardholders or licensees or to hold endorsements; (3) require employee permits; (4) specify how Montana residency is verified; (5) establish requirements for providers and marijuana-infused products providers regarding premises, employees, procedures, etc.; (6) establish requirements for producing marijuana-infused products, concentrates, and extracts; (7) establish requirements for labeling marijuana items; (8) establish requirements for packaging usable marijuana; (9) establish requirements for batch samples; (10) establish requirements for testing marijuana and marijuana-infused products; (11) establish procedures for when a sample fails an initial test; (12) establish requirements for the operation of testing laboratories; (13) require that testing laboratories be accredited; (14) require the use of an inventory tracking system; (15) provide requirements for transportation of marijuana; (16) provide for waste management; (17) provide for the recall of items that are not fit for human consumption; (18) require cardholders and licensees to report changes in circumstances; and (19) provide for department inspections. The department is also proposing to amend and repeal numerous rules largely in part to comply with statute or because the rules are covered by statute or the material has been moved to another rule. The department anticipates collecting \$2,203,050 in increased/new fees.

Notes/Hearing: A public hearing was held on November 30, 2017. Public comment was due on December 7, 2017.

Adoption Notice Notes: The department received much public comment (17 separate comments and responses) and amended some of the rules as proposed and made changes from the original proposal.

**MAR Notice Number:** 37-827

Subject: Child Care Assistance Program's amendment of rules pertaining to implementation of amendments to the Child Care and Development Block Grant Act

Summary: The department is proposing numerous amendments to administrative rules governing the department's Best Beginnings Child Care Scholarship Program, which provides child care assistance to low income families with working parents, families referred by TANF, and children with CPS, in order to conform the rules to federal requirements. Amendments include but are not limited to:

- implementing a 12-month authorization of child care services;

- providing a 12-month eligibility period for families receiving TANF;
- implementing a grace period of 3 months after a parent's loss of work or cessation of attendance at job training or an education program;
- allowing a child who is 12 years old at the time of the eligibility determination to remain eligible through the end of the 12-month eligibility period;
- allowing a case to be closed prior to the end of the 12 month eligibility period;
- revising language to be consistent with MAR 37-811; and
- changing the process for children with disabilities to allow a 12-month span for approval of additional reimbursement and to reduce the documentation required of parents and child care providers.

The department anticipates no fiscal impact to the state but does anticipate that the proposed rulemaking will significantly and directly impact small businesses.

Notes/Hearing: A public hearing was scheduled for January 12, 2018. Public comment was due January 19, 2018.

*Adoption Notice Notes:* The department received one comment supporting 12-month eligibility for TANF and graduated eligibility families and a child care provide expulsion plan and adopted the rules as proposed.

**MAR Notice Number:** 37-828

Subject: Medicaid rate, service, and benefit changes

Summary: The proposed rules reduces Medicaid rates and benefits in order to meet the \$49 million of cuts made to the department's budget during the special session. These include:

- amending 37.27.905 to provide that allowable non-Medicaid substance use disorder procedure bill codes and fee schedules on the department's website and that Medicaid disorder procedure bill codes and fee schedules are in ARM 37.85.106
- amending several ARMs to strike references to ARMs regarding reimbursement and, in some cases, replacing them with references to 37.27.905
- amending several ARMs to amend the effective date from January 1, 2018, to March 1, 2018
- eliminating reimbursement for the facility component of a provider-based entity service
- eliminating coverage for crowns and bridges for those 21 or over, adult dentures, and restricting access to orthodontia
- covering an eye exam and glasses every 730-day period instead of 365 days for those 21 or over except in certain circumstances
- making provider based entity hospital outpatient services no longer deemed inpatient services for bundling
- narrowing the scope of when a child is eligible for targeted case management services
- eliminating the registered dietician from the interdisciplinary of team
- reducing the number of youth outpatient therapies in a year from 24 to 10
- limiting out-of-state psychiatric residential facility reimbursement rate to 133% of in-state rate
- repealing rules on provider-based entity services

The department explains that the proposed rules are a result of the \$49 million in cuts made to its budget during the special session. The department also explains that in making the reductions proposed in the rule notice, it considered protecting those person who are most vulnerable, gave preference to the elimination or restoration of an entire Medicaid program instead of sacrificing of quality care for several programs through dilution of funds, and gave priority to services that reduce the need for acute care.

Notes/Hearing: A public hearing was scheduled for February 1, 2018. Public comment was due February 9, 2018.

*Adoption Notice Notes:* The department received 39 comments in all. It received many comments opposing the proposed spending reductions, which, according to the department, are intended to address the reduction to the department's budget of \$49 million general fund dollars. The department received many comments opposing the proposed spending reductions, stating that providers will have to eliminate services they provide to at-risk children and families. The department also received several comments stating that the rate reductions will cause providers, such as dentists, to refuse to serve Medicaid members or cause social service providers to eliminate programs for at-risk children and families and adults receiving services for substance use disorder.

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