



Children, Families, Health, and Human Services Interim Committee

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65th Montana Legislature

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May 4, 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 5 through 8 (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 March 2018 meeting.

PROPOSAL NOTICES

MAR Notice Number: 37-826

Subject: Adoption of a new rule pertaining to Medicaid auditor evaluations

Summary: The Department is proposing to adopt a new rule that will establish auditor evaluation hearing meetings to provide an opportunity for Medicaid providers and the Department to discuss appropriate conduct and determinations by contract auditors. The Department states that the new rule is necessary to implement portions of SB 82 (2017) (codified as 53-6-1409, MCA), which requires the Department to provide greater clarity and transparency regarding its integrity reviews. Note: The statute requires the Department to hold auditor evaluation hearings and, based on input gathered from providers, adopt rules for appropriate and inappropriate conduct and determinations by auditors and penalties and sanctions for inappropriate conduct and determinations.

The Department does not anticipate any fiscal impact and intends to apply the rule adoption retroactively to July 1, 2017.

Notes/Hearing: A public hearing is scheduled on May 16, 2018, at 1 p.m. in Room 207 of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on May 24, 2018.

MAR Notice Number: 37-831

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

Summary: The Department is proposing 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 does not anticipate any fiscal impact with the proposed amendments.

Notes/Hearing: A public hearing is scheduled on May 18, 2018, at 2 p.m. in Room 207 of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on May 26, 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, which is adopted and incorporated by reference in the proposal notice. Location is required under 2-4-307(2), MCA.

MAR Notice Number: 37-834

Subject: Update of the Healthcare Effectiveness Data and Information Set (HEDIS)

Summary: Under the Managed Care Plan Network Adequacy and Quality Assurance Act, Title 33, chapter 36, MCA, the Department is required to evaluate quality assurance activities of health carriers providing managed care plans in Montana. Administrative rule requires health carriers to report their quality assessment activities using HEDIS measures, which are nationally utilized and updated annually. The Department is proposing to adopt the 2018 HEDIS measures.

Notes/Hearing: A public hearing is not scheduled. Public comment is due by 5 p.m. on May 25, 2018.

MAR Notice Number: 37-836

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

Summary: The Department is proposing amendments to discontinue the supplemental DSH payments and to increase hospital reimbursement adjustor (HRA) supplemental payments. The Department explains 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 Fiscal Year 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 intends the rules amendment to apply retroactively to March 6, 2018.

Notes/Hearing: A public hearing was held on April 5, 2018. Public comment was due on April 13, 2018. At the request of the Montana Hospital Association, the Department extended the public comment period to May 4, 2018.

MAR Notice Number: 37-837

Subject: Implementation of amendments to the Child Care and Development Block Grant Act and final rules

Summary: The Department administers the Best Beginnings Child Care Scholarship Program (Program), which offers child care assistance to low-income families with working parents, families referred by TANF, and children with CPS. The Department is proposing the following changes to the Program:

- G adopt a new rule that will discontinue the Department's current practice of paying

some Head Start providers as child care providers for some preschool program hours. Under the new rule, payments cannot be made for preschool program hours.

- G adopt a new rule that will limit payment for in-home care to children with disabilities or special needs, children of a teen parent, or children of a parent who works nontraditional hours;
- G revise the Child Care Policy Manual;
- G add a household experiencing homelessness as a priority group if there are insufficient funds to provide benefits to all eligible households;
- G revise payment rates to eliminate the current rate structure of 14 rates and replace it with one statewide rate and reimburse on a part-time or full-time basis;
- G clarify which child care providers are eligible for payment for absent days;
- G provide requirements for the timeline in which a provider must submit an invoice; and
- G clarify when child care assistance can be terminated, including now allowing for a grace period if a parent is not meeting an activity requirement.

The Department does not anticipate a fiscal impact to the state. Small businesses may be significantly and directly impacted by the rulemaking.

Notes/Hearing: A public hearing was held on May 3, 2018. Public comment is due on May 11, 2018.

MAR Notice Number: 37-838

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

Summary: The Department is proposing 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 is proposing to remove overnight supports and companion services from the 1915c home and community-based services severe disabling mental illness waiver fee schedule because overnight supports has never been used and companion services has only been used minimally. The Department is proposing to require prior authorization of partial hospital for youth with a serious emotional disturbance and is removing the requirement that a youth must be at least 2 years old to receive outpatient therapy. The Department is proposing to remove the billing code in senior and long term care for independence advisor services and make it unusable for billing purposes, which the Department states 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 has listed the providers affected and the various fiscal impacts in detailed tables in the proposal notice.

Notes/Hearing: A public hearing is scheduled on May 17, 2018, at 1 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 May 25, 2018.

MAR Notice Number: 37-839

Subject: Amendment of Montana Medical Marijuana Program rules

Summary: The Department is proposing to amend ARM 37.107.118, which currently allows a licensee to have up to 50 square feet of canopy space per registered cardholder. The proposed amendment would create a canopy allotment composed of 20 levels. A canopy level will be assigned to a licensee at the time of license approval. The Department will monitor a licensee's number of cardholders quarterly, but a licensee may request a canopy reassessment at any time. The assignments are based on the number of registered cardholders the licensee serves. The levels and corresponding number of cardholders and allowable square footage can be viewed in the proposal notice. The Department is also revising the definition of canopy space to take into account the area of the floor, platform, or means of support or suspension of the plant.

The Department is also proposing to amend ARM 37.107.305, which pertains to testing laboratory licensee requirements. The proposed amendments would require a licensee to:

- G provide and maintain analytical testing laboratory professional liability insurance with an aggregate limit of \$1 million; and
- G obtain and maintain a \$25,000 surety bond that names the Department as a loss payee in the event the licensee fails to adhere to the security plan approved by the Department or operates the facility in a manner that results in the theft, loss, or diversion of marijuana items.

The Department is adopting a METRC Montana testing lab user guide that implements requirements for testing laboratories, including requirements for packaging and sampling, quality assurance testing, and transfers.

The Department anticipates no fiscal impact. The amendments may significantly and directly impact small businesses. The Department intends to apply the amendments retroactively to April 10, 2018.

Notes/Hearing: A public hearing was held on May 3, 2018. Public comment is due on May 11, 2018.

MAR Notice Number: 37-841

Subject: Amendment of Healthy Montana Kids (HMK) dental benefits

Summary: The HMK dental benefit follows the state of Montana employee dental benefits plan, which is the benchmark approved by CMS in the CHIP state plan. The Department proposes to update dental procedure codes as the state employee benchmark plan changes. The Department states that the amendments are necessary to comply with federal funding requirements. The Department anticipates no fiscal impact and intends for the amendments to go into effect July 1, 2018.

Notes/Hearing: A public hearing is scheduled on May 17, 2018, at 11 a.m. in Room 107 of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on May 25, 2018.

ADOPTION NOTICES/CORRECTION NOTICES

MAR Notice Number: 37-800

Subject: Expanding the children's special health services

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

Notes/Hearing: A public hearing was not held. Public comment was due on March 9, 2018.
Adoption Notice Notes: The Department received one comment in support of the proposed rulemaking and amended the rule as proposed. The Department will apply the amendment retroactively to July 1, 2017.

MAR Notice Number: 37-811 (CORRECTION)

Subject: Childcare facilities

Correction Notes: The Department has corrected the assignment of rule numbers to two new rules. New Rule I is now correctly assigned as 37.95.621 and New Rule III is now correctly assigned 37.95.624.

MAR Notice Number: 37-814 (CORRECTION)

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

Correction Notes: The Department filed a corrected adoption notice, in which erroneous renumbering in a definitions section was corrected.

MAR Notice Number: 37-820 (CORRECTION)

Subject: Medical marijuana

Correction Notes: The Department has corrected New Rule V, now 37.107.118(5), to include the following underlined language:

"A licensee must post signs inside the registered premises in a conspicuous location that read:...
(b) "No On-Site Consumption of Marijuana Except by Registered Cardholders."

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, requiring 24-hour nursing staff on site and that the education requirements of each youth be met. The changes are necessary to ensure compliance with federal requirements and remain consistent with state Medicaid requirements.

Notes/Hearing: A public hearing was held on March 1, 2018. Public comment was due on March 9, 2018.

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

MAR Notice Number: 37-830

Subject: Foster care licensing requirements

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

- G allow for the approval of 2-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;
- G 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 5 years to create a timelier process of application for foster care, adoption and guardianship by more closely adhering to federal requirements for the process; and
- G 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 was held on March 15, 2018. Public comment was due on March 23, 2018.

Adoption Notice Notes: The Department received comments in support of 2-year licenses and in support of the change in training hours. The Department also received comments expressing concern limiting the CPS checks to states applicants have lived in the last 5 years. The Department recognized the concern and adopted the rule with changes to provide that checks will be required for 5 years at a minimum.

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 held. Public comment was due on March 9, 2018.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The amendment went into effect April 1.

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, MCA, 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 held on March 2, 2018. Public comment was due on March 9, 2018.

Adoption Notice Notes: The Department received three comments: one which supported the Department's inclusion of foster children in the Passport program, one concerning the inclusion of children and adults in care coordination, and one opposing the per member per month rate reduction for members who are not categorically eligible for aged, blind, disabled and medically frail Medicaid. The Department amended and repealed the rules as proposed. The changes went into effect April 1.

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 proposed to adopt and incorporate into administrative rule a provider manual entitled "Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder". It also proposed 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 also proposed 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, program for assertive community treatment, and therapeutic group home 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 7 days to 5 days;
- (4) community-based psychiatric rehabilitation and supports will implement a limit of 2 hours per day (8 units per day);
- (5) targeted case management will implement a limit of 24 hours per state fiscal year (96 units per state fiscal year);
- (6) outpatient 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; and
- (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 proposed 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 proposed to remove the diagnosis code for schizophrenia (undifferentiated type) because unspecified/undifferentiated diagnoses are not reimbursable by Montana Medicaid.

The Department also proposed to implement a level of impairment worksheet. 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 proposed to amend several ARMs to align with current practices as outlined in the American Society of Addiction Medicine. 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 held on March 1, 2018. Public comment was due on March 9, 2018.

Adoption Notice Notes: The Department received extensive public comments, which it grouped into 41 comments and responded to in the adoption notice. The Department appears to have made significant changes to the rules as adopted, many of which occurred in amendments to the Medicaid Services Provider Manual, including but not limited to:

- G eliminating inconsistencies and conflicts and improving readability;
- G removing certain concurrent services limitations;
- G removing certain SUD outpatient therapy limits;
- G removing targeted case management limits;
- G removing the adult group therapy component for day treatment and modifying the medical necessity criteria.

Other general areas of concerns expressed in the comments include but are not limited to:

- G concern regarding rate reductions and changes in benefits;
- G concern regarding the imposition of limits (the Department amended or eliminated some limits in the manual revisions);
- G concern regarding the worksheets; and
- G concern regarding prior authorization and utilization review.

The changes go into effect May 1, 2018.

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