



Montana Legislative Services Division

Legal Services Office

June 17, 2010

TO: Law and Justice Interim Committee Members

FROM: Lisa Mecklenberg Jackson, Staff Attorney to the CFHHS Interim Committee

RE: Administrative rules relating to implementation of HB 130, HB 131, and HB 132

The purpose of this memo is to update you on the administrative rule process involving HB 130, HB 131, and HB 132, passed in the 2009 session. Because these bills were codified in Title 53, rulemaking authority falls to the Department of Public Health and Human Services (DPHHS). The Children, Families, Health, and Human Services Interim Committee oversees the activities of DPHHS and, as such, review of their administrative rule proposals falls to me, as the staff attorney for CFHHS. As you will see in the timeline below, DPHHS filed proposed rules implementing HB 130 and HB 131 in October 2009 and the final rules were published in May 2010. No rules have been offered implementing HB 132 (short-term involuntary treatment) as the department sees its role in temporary short-term treatment as licensing, possibly reporting, and developing "procedures for initiating limited guardian proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent," none of which require rulemaking.

Background

As you know, HB 130, 2009, provided for state matching funds to be granted to counties for crisis intervention, jail diversion, involuntary pre-commitment, and short-term inpatient treatment costs for persons with mental illness with the idea of lowering the use of the Montana State Hospital in these instances. Counties may apply alone, or with other counties, to implement a plan for community-based or regional emergency or court-ordered detention and examination services, and short-term inpatient treatment that includes a commitment to use local resources. Grants will be awarded according to a sliding scale with high use [of the state hospital] counties receiving a lower percentage of the match rates.¹ HB 130, partially codified at 53-21-1203, MCA, requires that the sliding scale be based upon two components: historical county use of the state hospital vs. total state use (in the statute identified as commitments, should have said admissions²) and county population vs. total state population.³ Additionally, HB 131, 2009,

¹Matching funds were originally to be awarded on a scale of 70% - 50%, decreasing in 5% increments with low use counties receiving 70% match and high use counties receiving 50% match.

²All parties are in agreement that the intent of the bill was to use total admissions (broader) for the count, rather than just commitments. This would include court-ordered detentions, emergency detentions, involuntary commitments, voluntary commitments, court-ordered evaluations, etc.

³Counties were asked to submit letters of intent to participate in the program; As of January 2010, 37 counties responded identifying local matching funds available to enable requests of \$3.25 million in matching grants. The available appropriation is \$1 million. HB 130 specifies that grants must be allocated based on available funding. The department determined that the responding counties represent 727,663 residents so the available funding was prorated for each eligible county (\$1 million divided by 727,663 ppl = \$1.37 per resident).

allows for the department to contract with a mental health facility for psychiatric treatment beds to the extent of available funding.⁴

Administrative Rule Timeline

May 9, 2009	HB 130, HB 131 become law.
October 19, 2009	The proposed administrative rules regarding HB 130, HB 131 (MAR Notice 37-491) filed with the Secretary of State.
November 23, 2009	Letter was sent to DPHHS asking for the department's response to ten comments from CFHHS which were the result of concerns raised by committee members at their November 16, 2009 meeting regarding the proposed rules.
December 17, 2009	Upon request, the department extended the comment period until this date.
January 13, 2010	Department's response to CFHHS received (see below).
January 25, 2010	CFHHS meets and hears from department on rules. Committee seems satisfied.
May 27, 2010	Final administrative rules regarding HB 130, HB 131 adopted (see below).

Department Response to CFHHS Concerns Regarding Proposed Administrative Rules (abbreviated) (1/13/2010)

1. What categories of commitments will be reimbursed by the department?
RESPONSE: All admissions to Montana State Hospital will be used in calculating the match rate.
2. Why can't the department use the matching grant formula established in HB 130?
RESPONSE: The department is using this formula: a ratio of admissions (county vs. state) to population (county vs. state) to compute the match rate.
3. The department's method of fund distribution on a pro rata basis by county population conflicts with the sliding scale requirement contained in HB 130.
RESPONSE: Disagree. The department used the sliding scale formula of populations and admissions to determine the match rate, then used a prorated distribution system that would consider the number of residents in all the counties submitting a letter of intent and divided this total by the total amount of funding available.
4. HB 130 uses the word "commitments"--the department is using "admissions." Please comment.
RESPONSE: All parties, including the bill sponsor, agree the intent was to use admissions including emergency and court ordered detentions. (NOTE: CFHHS has approved a clean-up bill to change "commitments" in the statute to "admissions").

⁴A contract will be developed with Western Montana Mental Health (WMMHC) for one secured crisis bed in the Butte crisis facility. In early 2010 a second contract was to be executed for an additional secure crisis bed in Bozeman.

5. Clarify whether grant amounts will be distributed across the state or directed towards specific areas that may already have programs in place.
RESPONSE: HB 130 directs the department to make grants to "each eligible county" and does not stipulate that grants be prioritized in any way. A county with an existing program would not necessarily receive a larger grant than one with a startup proposal. However, the existence of a "track record" would make it easier to evaluate the effectiveness of a program as well as the likelihood of future cost savings.
6. Are crisis intervention team training and crisis response team expenditures eligible for match?
RESPONSE: Yes, HB 130 charges the department to look at factors in awarding grants that will reduce admissions to the state hospital. Crisis intervention teams and crisis response teams are effective in reducing admissions for court-ordered and emergency detentions.
7. Which counties have submitted letters of intent to seek matching grants and what are the department's funding numbers?
RESPONSE: See chart attached to the rule comment response. (37 counties have responded with letters of intent at this time).
8. Will the department commit half of the biennial appropriation for this program in the FY2010 budget?
RESPONSE: Yes, the department has allocated approximately 50% of this biennial appropriation to funding these programs in FY2010. Unspent funds will be available for program implementation in FY2011. The appropriation for matching grants was included in HB 2 and was not designated as one-time-only funding. The sustainability will depend on future appropriations.
9. Are some counties slated to receive a larger grant amount than was asked for?
RESPONSE: No county will receive a larger grant amount than requested. The department will clarify this in the final rules. Also, if the county can't identify funds for a match, then no grant.
10. HB 130 directed the department to adopt rules for implementation by August 1, 2009 and fully implement the grant program by September 1, 2009. Please address the delay.
RESPONSE: The department believes that the grant program was fully implemented by the September 1, 2009 deadline. All counties received information on matching grants availability and the application process in an August 4, 2009 letter to MACo. The department acknowledges it did not meet the August 1 deadline for adoption of rules; it was a time-consuming process.

Key Points Contained in Adopted Administrative Rules (abbreviated) (5/27/2010)

- Added to Rule II: Funds distributed to counties via a contract with the department. Counties must submit invoices to the department for funds.
- Clarified that the sliding scale will be based on calculation of historical county use of the state hospital versus total state use of the state hospital and county population versus total state population (eliminated the per 1,000 county resident language).

- Sliding scale will be in increments of 50-70% (not 65% as proposed) in equal 5% increments.
- Clarified that the matching rate for grants will be based on the sliding scale formula with no county receiving a grant amount larger than the grant amount requested. Letters of intent will be used only to discover if counties intend to submit applications that would, in total, exceed the funds available. The per capita language in Rule IV will not be used to allocate funds but rather to "set aside" funds within the fiscal year's appropriation until a completed grant application is received and approved by the department. Match rates are based upon population and commitments. Grant amounts must be based on available funding.
- Stipulated that after the initial first year, grant applications that continue or expand activities implemented with a previous year's funding may be given priority over new applications if grant application requirements are met and the department determines the plan would promote appropriate use of the Montana State Hospital and would ultimately result in cost savings to the state.
- Reiterates the department's commitment to make grants to "each eligible county" as directed by HB 130, rather than to counties with models that are already working.
- States that the delay in rulemaking did not affect the availability of funds to county grant applicants. As of May 27, 2010, the department has signed a contract with Yellowstone County (and ten partner counties). Contracts with Missoula County, Lewis & Clark County (and three partner counties), and Ravalli County are pending.

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