



Children, Families, Health, and Human Services Interim Committee

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64th Montana Legislature

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August 12, 2016

To: Children, Families, Health, and Human Services Interim Committee
From: Julie Johnson, Staff Attorney
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 12 through 15

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 (MAPA). At its June 2015 meeting, the Committee elected to receive biweekly e-mails from staff, which summarize DPHHS rule activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the mailing for the Committee's June meeting.

The Department has proposed the following:

MAR Notice Number: 37-757

Subject: Medicaid pharmacy reimbursement

Summary: The Department is proposing to amend ARM 37.85.105 (recently amended by MAR Notice 37-745, discussed below) concerning pharmacy dispensing fees. The department is proposing a three-tiered professional dispensing fee model based on prescription volume that has an effective date of July 1, 2016. A pharmacy with a lower volume can collect a higher maximum fee than a pharmacy with a higher volume.

The Department estimates that the cost savings from these amendments remains at the \$4.3 million previously indicated in MAR Notice 37-745.

Notes/Hearing: A public hearing is scheduled on July 7, 2016, at 11 a.m. in the auditorium of the DPHHS building.

MAR Notice Number: 37-759

Subject: Updating poverty guidelines to determine eligibility for a loan of specialized telecommunications equipment

Summary: The Department is proposing revisions to replace the 2015 poverty guidelines with the 2016 guidelines. The rule being amended sets out the eligibility criteria for a loan of specialized telecommunication equipment based on income, which is an annual family income of less than 250% of the poverty guideline. The Department has determined that there is no fiscal impact associated with the proposed changes.

Notes/Hearing: No public hearing is scheduled or contemplated.

MAR Notice Number: 37-749

Subject: Low income weatherization assistance program

Summary: The Department is proposing to amend rules regarding the low income weatherization assistance program (LIWAP). The department is proposing "housekeeping" amendments that do not affect the substance of the rules but clarifies them. The department is also incorporating by reference the Montana Weatherization Assistance Program (WAP) Policy and Procedure manual, effective July 1, 2016, into the rules. The Department estimates that the rules will not directly impact small businesses.

Notes/Hearing: A public hearing is scheduled on July 28, 2016, at 1:30 p.m. in hearing room 207 in the DPHHS Sanders building.

MAR Notice Number: 37-755

Subject: Comprehensive school and community treatment (CSCT) program

Summary: The department is proposing an amendment to remove the requirement for the Montana Child and Adolescent Needs and Strengths (CANS) assessment and eliminate the requirement for the mental health center and the school to file an annual joint report.

Notes/Hearing: A public hearing is scheduled on July 28, 2016, at 9:00 a.m. in the auditorium in the DPHHS Sanders building.

MAR Notice Number: 37-756

Subject: Hearing and appeal procedures concerning the Children's Mental Health Bureau

Summary: The department is proposing to enact a rule to establish formal and informal hearing and appeal procedures concerning the Children's Mental Health Bureau. The Department has determined that there is no fiscal impact associated with the proposed changes.

Notes/Hearing: A public hearing is scheduled on July 28, 2016, at 11:00 a.m. in the auditorium in the DPHHS Sanders building.

MAR Notice Number: 37-765

Subject: Medicaid primary care services

Summary: The Department is proposing to amend administrative rules regarding claims processing and reimbursement, hospital cost reporting, inpatient hospital reimbursement, and reimbursement for group and education health services at rural health clinic and federally qualified health centers. According to the Department, the rules are being updated to correct dates and claim forms, update reimbursement policies for inpatient APR-DRG hospitals, and update and add new definitions to rural health clinics and federally qualified health centers. The Department estimates that the aggregate fiscal impact of these amendments is \$190,00 in FY 2017. The first amendment with a fiscal impact of \$157,000 amends the rule to include license addiction counselors in the definition of a "health professional". The second proposed amendment with a fiscal impact of \$32,000 is to reimburse group and education health services at approved Rural Health Clinics and Federal Qualified Health Centers separately. The proposed amendments, if adopted, would be effective October 1, 2016.

Notes/Hearing: A public hearing is scheduled on August 11, 2016, at 9 a.m. in the auditorium of the DPHHS building on North Sanders.

MAR Notice Number: 37-758

Subject: Reimbursement to recipients of Medicaid for developmental disability services

Summary: The Department is proposing to amend two administrative rules. The first amendment eliminates the 1037 waiver, which according to the Department, was being underutilized. The recipients of the 1037 waiver are being moved to the 0208 comprehensive waiver, which provides all the same services as the 1037 waiver. The transferred recipients will receive no changes or loss in services. The second amendment replaces all references to the Montana Developmental Disabilities Program Manual with references to the new edition of the manual, which is dated July 1, 2016. The reimbursement fees for providers contained in the latest edition of the manual includes the amount appropriated by the Legislature last session for provider rate increases and the fiscal impact of the provider rate increases is \$3.8 million.

Notes/Hearing: A public hearing is scheduled on August 25, 2016, at 2:30 p.m. in Room 207 of the DPHHS building on North Sanders.

MAR Notice Number: 37-762

Subject: Child care assistance provided through the Best Beginnings Child Care Scholarship (BBCCS) Program

Summary: The Department is proposing to adopt, amend, and repeal rules related to the BBCCS program. The rules transfer duties related to Legally Certified Providers from the Early Childhood Services Bureau (ECSB) to the Licensing Bureau of the Quality Assurance Division (QAD). The rules also replace references to the Child Care Policy Manual to the newest version of the manual, which becomes effective September 30, 2016. The new version of the manual replaces references to "Certified Enrollment" with "Absent Days" and contains a number of new policy sections concerning, among a few, the following: graduated phase out of eligibility, market rate surveys of child care provider rates being conducted every three years instead of annually, and grace periods for homeless families. The Department does not expect that the proposed amendments will have any fiscal impact.

Notes/Hearing: A public hearing is scheduled on August 25, 2016, at 1:30 p.m. in Room 207 of the DPHHS building on North Sanders.

MAR Notice Number: 37-766

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

Summary: The Department is proposing to strike subsection (6) of ARM 37.86.1005, which currently caps overall lifetime services for orthodontia at \$7,000. According to the Department, the rule is being updated to match the guidelines for children under the Early Periodic Screening Diagnostic and Treatment services program guidelines. No fiscal impact is expected.

Notes/Hearing: A public hearing is scheduled on August 25, 2016, at 9 a.m. in the auditorium of the DPHHS building on North Sanders.

The Department has amended the following:

MAR Notice Number: 37-751

Subject Children's Mental Health Bureau Medicaid Services Policy Manual revisions

Summary: The Department is proposing revisions to the Children's Mental Health Bureau Medicaid Services Policy Manual, including but not limited to the following:

- removing references to the Montana CANS Functional Assessment because the Department has discontinued the requirement of the CANS assessment;
- inserting a new subchapter regarding youth leaving correctional facilities and entering services provided by Montana Medicaid;
- clarifying serious emotional disturbance diagnosis requirements for youth under 6 years of age and youth 18 to 20 years of age who are in an accredited secondary school;
- requiring prior authorization for out-of-state acute inpatient hospitals; and
- revising psychiatric residential treatment facility (PRTF) requirements, including changing medical necessity and continued stay criteria; adding documentation requirement for in-state PRTF denials; and providing that a discharge plan review form be optional.

The Department has determined that there is no fiscal impact associated with the proposed changes.

Amended Proposal Notice Notes: The Department notes has amended the rule as proposed, however, it made some changes to the Medicaid Services Provide Manual, which will now be effective August 6, 2016, instead of July 15, 2016.

The Department has adopted the following (adoption notice notes in italics):

MAR Notice Number: 37-745

Subject: Revision of fee schedules for Medicaid provider rates

Summary: The Department is proposing provider rate increases to reflect appropriations contained in HB 2 (2015).

Amended Proposal Notice Notes: The Department notes that it inadvertently included in the proposal notice new conversion rates for outpatient hospitals and a new all patient refined - diagnosis related groups fee schedule for inpatient hospitals. The amended proposal notice corrects these errors. The public comment period was extended to May 27, 2016.

Notes/Hearing: A public hearing was held on May 12, 2016. **Contacted agency rule reviewer regarding erroneous AUTH/IMP cites and clarity of draft language.

Adoption Notice Notes: The Department received numerous comments, mostly concerning the pharmacy dispensing fee changes. The Department withdrew the proposed dispensing fee changes and indicated it would propose a tiered dispensing fee based on prescription volume as it did in 37-757. The other amendments as proposed in 37-745 were adopted.

MAR Notice Number: 37-746

Subject: Changes to Medicaid pharmacy reimbursement

Summary: The Department is proposing to increase professional dispensing fees for Montana Medicaid pharmacy providers and to modify the drug reimbursement calculation. The Department is proposing to change the outpatient drug ingredient reimbursement by eliminating the current estimated acquisition cost reimbursement methodology and replacing it, in accordance with federal guidelines, with a new methodology referred to as average acquisition

cost, which is based on drug invoice data and sets drug ingredient reimbursement as close to actual acquisition as possible. The proposed rulemaking will require all providers to submit their actual acquisition cost and usual and customary charge to Montana Medicaid. The proposed rule amendments will have an administrative cost of \$139,583.31 (FY16) and \$141,666.64 (FY17) and is expected to result in a projected cost savings of \$4.3 million. The Department has determined that the proposed rulemaking directly and significantly impacts small businesses. The group of small businesses that will be affected are pharmacies enrolled in Montana Medicaid that have fewer than 50 employees. It is estimated that the affected businesses will see a reduction on average of \$2.56/Montana Medicaid pharmacy claim.

Notes/Hearing: A public hearing was scheduled on May 12, 2016, at 1:30 p.m. in the auditorium of the DPHHS building.

Adoption Notice Notes: The Department received numerous comments, mostly concerning the pharmacy dispensing fee changes. The Department withdrew the proposed dispensing fee changes and indicated it would propose a tiered dispensing fee based on prescription volume. The Department also added a definition of "federal maximum allowable cost" in 37.86.1101. The other amendments as proposed in 37-746 were adopted.

MAR Notice Number: 37-748

Subject: Nursing facility reimbursement/update of terminology

Summary: The Department is proposing to amend rules pertaining to Medicaid nursing facility reimbursement to implement the HB 2 (2015) provider rate increase and to update outdated terminology (replacing references to individual with mental retardation with references to individual with intellectual disabilities) to reflect current usage.

Notes/Hearing: A public hearing was held on May 12, 2016, at 2:30 p.m. in the auditorium of the DPHHS building.

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

MAR Notice Number: 37-738

Subject: Reduction of application and renewal fees for Montana Marijuana Act cardholder registry

Summary: The Department is proposing to reduce the registered cardholder application fee and annual renewal fee from \$75 to \$5. The Department states that the Montana Marijuana Program "is charged only with generating 'revenue sufficient to offset all expenses of implementing and administering [the program]' " and that, therefore, the reduction in the fee amounts is necessary because the current fee amounts of \$75 are generating excess revenues.

Notes/Hearing: A public hearing was held scheduled on March 10, 2016, at 1:30 p.m. in the auditorium of the DPHHS building.

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

MAR Notice Number: 37-747

Subject: Hospice reimbursement and updates

Summary: The Department is proposing to amend administrative rules that currently incorporate by reference portions of the Code of Federal Regulations (CFR) pertaining to standards for participation in and reimbursement rates for hospice care. The proposed amendments mainly involve updating references to more recent versions of the CFRs. The Department states that the proposed amendments are necessary to incorporate the most recent federal regulations governing hospice participation and reimbursement. Failure to update the rules will result in the hospice program being out of compliance with federal regulations.

Notes/Hearing: A public hearing is scheduled on May 26, 2016, at 10 a.m. in the auditorium of the DPHHS building.

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

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