



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

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### 60th Montana Legislature

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FONG HOM, Secretary

TO: Committee members  
FROM: Lisa Mecklenberg Jackson, Staff Attorney  
RE: DPHHS Administrative Rule Activity  
DATE: June 2, 2008

The Department of Public Health and Human Services has filed the following rule notices with the Secretary of State's Office for publication in the Montana Administrative Register (MAR):  
*(Notices in their entirety are available online at:  
<http://www.dphhs.mt.gov/legalresources/recentlyadoptedrules/index.shtml>)*

#### Notices of Adopted Rules:

##### I.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice No. 37-423, NOTICE OF ADOPTION -- a public hearing was held January 4, 2008 to consider the adoption of nine new rules pertaining to the awarding of grants to carry out the purposes of the Montana Community Health Center Support Act. Twelve written comments were received and responded to and all nine rules were adopted. These rules are necessary to implement HB 406, 2007, which established the Montana Community Health Center Support Act (codified at MCA 50-4-801 through 50-4-815). These rules implement the legislative mandate to enhance access to primary care and preventative care for Montana residents by strengthening and supporting Montana's community health centers. This will be done by: 1) creating a grant process; 2) creating and supporting new nonfederally funded community health centers; 3) expanding the medical, mental health, or dental services offered by existing federally qualified health centers (FQHC) or other facilities that have received federally qualified health center look-alike status; and 4) providing one-time grants for capital expenditures to existing federally qualified health centers and facilities with federally qualified health center look-alike status.

##### II.

MAR 2008 Issue No. 7 (April 10, 2008), MAR Notice 37-427, NOTICE OF AMENDMENT -- a public hearing was held February 7, 2008 to consider the proposed amendment of one rule pertaining to Medicaid reimbursement for the therapeutic portion of therapeutic youth group home treatment services. Nineteen comments were received, most of them centered on the department's methodology for computing Medicaid reimbursement rates for Campus Based Therapeutic Youth Group Homes (CBTGH). The department proposed a new reimbursement methodology for CBTGH relying on a modified cost settlement process. Based on comments received, the department will forego the proposed cost settlement process for SFY 2008 and will establish an adjusted SFY 2009 rate based on SFY 2008 cost reports. When the resulting cost

study is completed, the department will solicit input from providers who participated in the cost study. It will use actual costs from providers who complete the cost survey. The department will use the reimbursement rate from SFY 2007 for providers who do not participate. All providers will have one new rate for SFY 2009, based on the weighted average of "costs" from SFY 2008 and subject to legislative appropriation. The SFY 2008 rate for out-of-state providers will depend on their participation in the cost study. The department is waiting for further guidance from CMS regarding unbundled services. All providers will be paid the same rate for SFY 2009 regardless of whether they are an in-state or out-of-state provider. In addition, the cost study will be used only to develop a new rate for SFY 2009, not to cost settle with providers.

### III.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-428, NOTICE OF AMENDMENT -- on February 14, 2008, the department filed a NOTICE of amendment with regard to one rule pertaining to components of quality assessment activities. No public hearing was held and no comments were received. ARM 37.105.501 et seq. were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using health plan employer data and information set (HEDIS) measures, nationally-utilized measures that are updated annually (subjects might include cervical cancer screening codes, diabetes care codes, etc.). Since the HEDIS standards change somewhat every year, the rule must be updated annually to reflect the current year's measures and to ensure that national comparisons are possible, since the other states will also be using the same updated measures. This rule amendment will be retroactive to January 1, 2008.

### IV.

MAR 2008 Issue No. 7 (April 10, 2008), MAR Notice 37-429, NOTICE OF ADOPTION -- a public hearing was held March 5, 2008 to consider the proposed adoption of ten new rules pertaining to 72-hour presumptive eligibility for adult crisis stabilization services. No comments or testimony were received. As was discussed by Joyce DeCunzo at the March 2008 CFHHS meeting, these rules are necessary to implement a restricted appropriation in HB 2 by the 2007 legislature to develop community mental health crisis services and for provision of psychiatric consulting services for community providers who manage and administer community mental health crisis services. In essence, these rules establish the administrative and reimbursement structure for crisis stabilization services. The department expects the effect of these proposed rules to equal the amount appropriated--\$2,032,770 annually. The department intends to apply the proposed reimbursement rules to services provided on or after March 1, 2008.

### V.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-430, NOTICE OF AMENDMENT -- a public hearing was held March 19, 2008 to consider the proposed amendment of one rule pertaining to Vocational Rehabilitation Program payment for services. No comments or testimony were received. The department is amending ARM 37.30.405 which sets forth the criteria allowing the department to pay for services being made available to persons who are

eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule. The maximum level is 250% of the 2008 federal poverty guidelines for households.

#### VI.

MAR 2008 Issue No. 8 (April 24, 2008), MAR Notice 37-431, NOTICE OF AMENDMENT -- a public hearing was held March 19, 2008 to consider the proposed amendment of one rule pertaining to the Low Income Energy Assistance Program (LIEAP). No comments or testimony were received. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. ARM 37.70.601(1)(c) contains tables of benefit amounts that are used to determine the size of an eligible household's benefit. Each year the base benefit amounts in this rule are revised to take into account changes in fuel prices, the number of households that will be eligible for benefits, and LIEAP funding, all of which change from year to year. The amendment of ARM 37.70.601(1)(c) is necessary to increase the benefit amounts in the base benefit tables as a result of increased federal funding of \$3,689,679 after Congress finalized the LIEAP appropriation on October 1, 2007.

#### VII.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-432, NOTICE OF ADOPTION -- a public hearing was held March 25, 2008 to consider the proposed adoption of two new rules pertaining to general Medicaid services, physician administered drugs. Two written comments were received. These new rules are necessary for Montana's compliance with requirements of the Deficit Reduction Act of 2005 (DRA) pertaining to prescription drugs under the Medicaid program. The Center for Medicare and Medicaid Services (CMS) is requiring states to obtain rebates on at least the top 20 multiple-source physician administered drugs with the highest dollar volume dispensed under the Medicaid program and manufactured by companies that have a signed rebate with CMS. States may require reporting of National Drug Codes (NDCs) on all physician administered drugs for rebate purposes. Effective April 1, 2008, the department requires providers to report NDCs along with healthcare common procedures coding system (HCPCS) codes on all payable physician administered drugs to be in compliance with the Medicaid prescription drug requirements of the DRA.

#### VIII.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-433, NOTICE OF ADOPTION, AMENDMENT AND REPEAL -- a public hearing was held April 4, 2008 to consider the proposed adoption of nine new rules, the amendment of nine existing rules, and the repeal of five rules pertaining to the Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx). One comment was received. The 2005 legislature enacted laws providing for a program offering all Montana citizens an avenue to investigate ways of controlling medication costs and deriving additional health benefits from proper use of medications. The department is calling this program the "PharmAssist Program" and these new rules lay out its implementation. Those individuals with a chronic disease and taking four or more medications are eligible for the PharmAssist program which will include a consultation by a licensed pharmacist with an individual on how to

avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional. The department estimates the program will service approximately 50-100 persons monthly. \$317,000 has been budgeted annually for this service and includes development and delivery of continuing education requirements to pharmacists and delivery of services to eligible persons. Montana's Big Sky Rx Program pays a portion of all the cost of the Medicare Prescription Drug Plan (PDP) premium for eligible Montana residents. Existing rules concerning the Big Sky Rx Program are proposed for modification to coordinate the state program with the federal program. This includes a federal premium subsidy called Social Security Extra Help (SSEH) that assists in paying copayments, deductibles, and premiums for some individuals. The department intends these rules to be applied retroactively to July 1, 2007.

### **Notices of Proposed Rules:**

#### **IX.**

MAR 2008 Issue No. 6 (March 27, 2008), MAR Notice 37-434, NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL -- the department has filed a NOTICE in the matter of the proposed adoption of one new rule, the amendment of eight rules, and the repeal of one rule pertaining to Temporary Assistance for Needy Families (TANF). A hearing was held April 16, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period ran until April 24, 2008. The department is proposing the addition of a post-employment program that would benefit households which would otherwise lose eligibility for TANF cash assistance due to new or increased earned income of an individual currently receiving TANF cash assistance. Households would be eligible to receive an assistance payment in a set amount for a period up to, but not exceeding, three months. Individuals in this program would be required to negotiate a Family Investment Agreement/Employability Plan (FIA/EP) that would include their employment hours as allowable work activities. They would be considered TANF recipients and therefore eligible for TANF child care services for employment hours negotiated in the FIA/EP. They would also be eligible to receive TANF supportive services to assist with continued participation and employment. The department estimates that approximately 1,518 of the 3,175 TANF cases currently receiving cash assistance will meet eligibility criteria for this program.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

#### **X.**

MAR 2008 Issue No. 7 (April 10, 2008), MAR Notice 37-435, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE in the matter of the proposed amendment of one rule pertaining to resource based relative value scale (RBRVS). A hearing was held May 5, 2008 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until May 8, 2008. The purpose of this proposed rule amendment is to update the resource based relative value scale (RBRVS) fees paid to enrolled Medicaid providers in accordance with the most recently published relative value units (RVUs) released by CMS. The change in the Montana Medicaid fees is effective July 1, 2008. Also, HB 2 in 2007, appropriated an additional 1.67% provider rate increase and a physician specific appropriation of \$2,043,234 for physicians.

ARM 37.85.212 specifies the reimbursement methodology for these multiple professional providers.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

#### XI.

MAR 2008 Issue No. 7 (April 10, 2008), MAR Notice 37-436, NOTICE OF PROPOSED REPEAL -- the department has filed a NOTICE in the matter of the proposed repeal of one rule pertaining to the direct care wage add-on for certain mental health care providers. No public hearing was contemplated. The comment period ran until May 8, 2008. The department is proposing to repeal ARM 37.88.1111. The rule is obsolete and the direct care wage add-on for certain mental health care providers will be accomplished via contracts with the providers instead. There is no negative impact to providers.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

#### XII.

MAR 2008 Issue No. 8 (April 24, 2008), MAR Notice 37-438, NOTICE OF PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE in the matter of the proposed adoption of one new rule and the amendment of four rules pertaining to Medicaid nursing facility reimbursement. A hearing was held May 14, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period ran until May 22, 2008. The proposed rule and amendments are necessary to implement federal regulations and legislative funding. In May 2007, CMS adopted changes related to cost limits for providers operated by "units of government" and altering the definition of public status that would apply to nursing facility services. These changes were under a congressional moratorium for one year which expired in May 2008. Montana is required to incorporate the CMS changes and update Medicaid nursing facility reimbursement rules and the rules related to rate adjustments to county funded rural nursing facilities. Thus, the department is proposing a new Medicaid reimbursement rule for providers defined as "unit of government of nursing facilities." It provides for an interim 2009 rate with final reimbursement determined from cost reports. A new CMS rule limits payments that can be made to government providers through intergovernmental fund transfers by capping reimbursements at individual facility cost. The federal regulations redefine eligible public providers and impose new restrictions on nonfederal funding sources. In accordance with those changes, the department is proposing changes to Medicaid reimbursement for a unit of government nursing facility so as not to exceed allowable costs. The department believes the proposed rate methodology is the best possible compromise between administrative requirements and optimal reimbursement amounts. The department intends to implement rates effective July 1, 2008, with rate sheets to providers delivered as soon as case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement are available.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical

problems were noted.

### XIII.

MAR 2008 Issue No. 8 (April 24, 2008), MAR Notice 37-439, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE in the matter of the proposed amendment of three rules pertaining to Medicaid requirements and reimbursements for outpatient drugs. A hearing was held May 14, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period ran until May 22, 2008. The department is proposing amendments to ARMs 37.86.1101 and 37.86.1102 that would allow Medicaid providers to dispense maintenance medications sufficient for a 90-day supply or 100 units, whichever is greater. Other medications would be dispensed in quantities as great as a 34-day supply. This would be a significant increase from the current rule limiting all medications to a 34-day maximum supply. The department is also proposing an amendment that would add a requirement that providers maintain a signature log for all prescriptions. Finally, the department is proposing an amendment to ARM 37.86.1105 that would implement a 1.67% increase in the Medicaid pharmacy dispensing fee as allowed by legislative appropriation. This would increase the maximum dispensing fee from \$4.86 to \$4.94 for in-state providers. The overall impact to the budget as a result of these proposed changes would be an annual savings of \$36,773.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

### XIV.

MAR 2008 Issue No. 8 (April 24, 2008), MAR Notice 37-440, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE in the matter of the proposed amendment of six rules pertaining to hearing aid services, dental, home infusion therapy, durable medical equipment, and ambulance services. A hearing was held May 15, 2008 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The comment period ran until May 22, 2008. The proposed amendments are necessary to implement Medicaid reimbursement rate increases mandated in appropriations made by the 2007 Montana Legislature. The proposed rates would be 1.67% more than currently paid for hearing aid, dentist, home infusion therapy, transportation, and ambulance services.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

### XV.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-441, NOTICE OF PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE in the matter of the proposed adoption of 13 new rules and the amendment of one rule pertaining to crisis stabilization facilities. A hearing was held May 30, 2008 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until June 6, 2008. The new rules are intended to apply to all state licensed mental health centers or hospitals providing a secured crisis stabilization service as part of the crisis service continuum. The proposed new rules

describe a level of care that addresses the need to respond to mental health crisis within the community by setting the minimum standards for a secured crisis stabilization facility that will provide secured care for individuals experiencing a crisis due to serious mental illness and/or a co-occurring substance use disorder. A secured crisis stabilization facility is intended to provide, when medically appropriate, a safe alternative to acute inpatient or hospital care through evaluation, assessment, intervention, and referral. Individuals who will be served in this type of facility are now seen in a hospital emergency room at considerable public expense. For those who do not require acute inpatient care, the crisis stabilization facility provides a safe, less expensive alternative for patient assessment of clinical needs and referral to the appropriate available resources in the community. Specifically, the rule proposals identify requirements for policies and procedures, clinical records, client assessments, client discharge, management of inappropriate client behavior, quality assessment, and minimum requirements for the physical environment, personnel records, and staffing operations.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

#### XVI.

MAR 2008 Issue No. 9 (May 8, 2008), MAR Notice 37-442, NOTICE OF PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE in the matter of the proposed adoption of four new rules and the amendment of one rule pertaining to Medicaid eligibility. A hearing was held June 2, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until June 5, 2008. The department proposes to adopt the four new rules to clarify the existing policy of the Public Assistance Bureau that in determining Medicaid eligibility, exclusions may not be applied to any property a filing or assistance unit does not own, and to foreclose any mistaken beliefs that filing or assistance units may apply exclusions to property they do not own if the property is owned by or held pursuant to some legal entities, instruments, or devices, and not others. The amendment to ARM 37.82.101 is for the purposes of adopting the most recent Family Medicaid and the Aged, Blind, and Disabled (ABD) Medicaid manuals that set forth information about the eligibility requirements for Medicaid which is more detailed than that appearing in the administrative rules.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

#### XVII.

MAR 2008 Issue No. 10 (May 22, 2008), MAR Notice 37-443, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE in the matter of the proposed amendment of one rule pertaining to laboratory testing fees. No public hearing is contemplated. The comment period runs until June 19, 2008. ARM 37.12.401 provides information regarding the fees charged for biological and environmental tests performed by the Montana State Laboratory, in conformity with state statute. The department proposes to modify the rules to reference the new version of the state laboratory fee list, which provides an average increase of 4% in the cost of lab services. The revised fees are necessary to keep the fees charged for lab service in line

with the actual current cost associated with providing that service. The proposed fees account for the increased costs incurred by the laboratory since the last fee increase, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

**TECHNICAL NOTE:** The proposed rules were reviewed by committee staff and no technical problems were noted.

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