



Children, Families, Health, and Human Services Interim Committee

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65th Montana Legislature

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January 8, 2018

To: Children, Families, Health, and Human Services Interim Committee
From: Alexis Sandru, Staff Attorney
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 17 through 24

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 September 2017 meeting.

PROPOSAL 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.

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.

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

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.

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.

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.

MAR Notice Number: 37-823

Subject: Amendment of rules pertaining to the Low Income Energy Assistance Program (LIEAP)

Summary: The Department is proposing to amend rules pertaining to LIEAP to update the benefit award matrix for the 2017-2018 heating season in order to take into consideration available funding, fuel costs, and the number of households expected to receive benefits. The Department is also proposing to use the 2017 poverty guidelines (update from 2015 guidelines) in determining LIEAP eligibility and to revise the nonbusiness resource limits to adjust for inflation.

Notes/Hearing: A public hearing was held on December 14, 2017. Public comment was due on December 22, 2017.

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 Temporary Assistance for Needy Families (TANF), and children with Child Protective Services, 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 is scheduled for January 12, 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 January 19, 2018.

ADOPTION NOTICES

MAR Notice Number: 37-736

Subject: Medicaid substance use disorder services

Summary: The Department proposed to repeal existing administrative rules concerning chemical dependency and abuse treatment services and replace the rules with four new rules that establish standards for the coverage and reimbursement of substance use disorder services under the Montana Medicaid program, including:

- updating antiquated language;
- expanding the definition of "substance use disorder services" to include services such as screening and detoxification;
- clarifying that inpatient services must be provided in a nonhospital setting;
- specifying which procedure codes, modifiers, and definitions must be used for providers to bill for services and the reimbursement rate paid for those services;
- providing that services must be determined medically necessary by a licensed health care professional acting within the scope of the professional's practice (administrative rule currently provides that licensed addiction counselors must determine medical necessity).

The Department stated that the proposed new rules will increase benefits for eligible

individuals by allowing nonhospital inpatient and day treatment services to be billed under Medicaid for adults age 21 and older. The Department anticipated that this will result in a fiscal impact of \$3,845,927 in FY 2018 and FY 2019 and will impact 1,302 individuals.

Notes/Hearing: A public hearing was held on August 24, 2017. Public comment was due on September 1, 2017.

Adoption Notice Notes: The Department received one comment recommending that a prescribing provider be required to have an in-person relationship with a patient to whom the provider issues a controlled substance designated in Schedule II for medication-assisted treatment. The Department acknowledged the importance of the recommendation and stated that it will release medication-assisted treatment rules soon, and once those rules are approved, it will propose amending necessary substance use disorder rules. The Department adopted and repealed the rules as proposed.

MAR Notice Number: 37-743

Subject: Amendments to Healthy Montana Kids (HMK) evidence of coverage

Summary: The Department proposed to incorporate by reference a revised version of the HMK evidence of coverage, which included the following revisions:

- changing HMK prior authorization procedures to require providers, not parents, to obtain prior authorization for certain services;
- covering certain therapies for developmental disabilities;
- adopting HELP Act and plan language to describe the pharmacy benefit;
- adding definitions of "rehabilitation" and "habilitation";
- having the Department's fiscal agent administer the ambulance benefit and removing the ambulance copay;
- adopting the Medicaid definition of "medically necessary"; and
- using the third-party administrator to authorize dental anesthesia and dental implants.

The Department did not anticipate a fiscal impact associated with the proposed amendments.

Notes/Hearing: A public hearing was held on July 14, 2017. Public comment was due on July 21, 2017.

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

Correction Notes: The Department notes that it received one public comment, which expressed concern that the applied behavior analysis benefit was not included in the filing, and did not respond to the comment in the adoption notice. The Department has filed a notice of correction in which the comment and the Department's response that there will be future rulemaking concerning the ABA benefit will be added to the adoption notice.

MAR Notice Number: 37-768

Subject: Amendment and repeal of certain case management services

Summary: The Department proposed several amendments to rules pertaining to targeted case management services for high-risk pregnant women and for children and youth with special health care needs in order to align with the state plan agreement approved by the Centers for Medicare

and Medicaid Services, including updating definitions, eligibility requirements, reimbursable services, provider requirements, reimbursement methodology, and reporting requirements. The Department anticipated no fiscal impact.

The Department also proposed to repeal rules pertaining to case management services for children at risk of abuse and neglect because the program is no longer in existence.

Notes/Hearing: A public hearing was held on August 10, 2017. Public comment was due on August 18, 2017.

Adoption Notice Notes: The Department received three comments: one in support of the rule and two that sought clarification regarding a targeted case management provider's communication with a member's provider. The Department amended and repealed most of the rules as proposed and, in response to the public comment received, further amended a rule to require at least quarterly communication.

MAR Notice Number: 37-788

Subject: Update of non-Medicaid and Medicaid fee schedules

Summary: In anticipation of decreases in revenues, the Department proposed to update effective dates of non-Medicaid and Medicaid fee schedules to October 1, 2017, in order to implement an across-the-board decrease in reimbursement for Medicaid and non-Medicaid services and supplies paid under RBRVS, APR-DRG, Outpatient Prospective Payment System for outpatient hospital services, fee for service, and Medicare payment methodologies. The Department calculated the necessary reduction at 3.47%.

The Health Resources Division proposed to reduce provider reimbursements by \$3,922,143 in state funds plus corresponding federal funds. The Senior and Long Term Care Division proposed to reduce reimbursements by \$841,682 in state funds plus corresponding federal funds. The Addictive and Mental Disorders Division proposed to reduce reimbursements by \$910,800 in state funds plus corresponding federal funds. The Developmental Services Division--Children's Mental Health Bureau proposed to reduce reimbursements by \$1,548,283 in state funds plus corresponding federal funds. Comprehensive School and Community Treatment funds were proposed to be reduced by \$448,473 plus corresponding federal funds. (For a detailed fiscal impact analysis and description of the services/providers affected, see the rule notice.)

Notes/Hearing: A public hearing was held on July 27, 2017. Public comment was due on August 4, 2017.

Adoption Notice Notes: The Department received many comments, mostly opposing and/or questioning the 3.47% rate reduction. The Department has adopted a 2.99% rate reduction, which it intends to go into effect January 1, 2018. **The 2.99% rate reduction adopted in this rule cannot be implemented until after the next legislative session unless the Committee's November 8, 2017, objection is resolved.

MAR Notice Number: 37-789

Subject: Revision of nursing facility reimbursement rates for SFY 2018 (effective July 1, 2017)

Summary: The Department proposed the following revisions to nursing facility reimbursement rates:

- updating references from SFY 2017 to SFY 2018 to provide notice of the current period of funding;
- providing that a nursing facility is eligible to participate in the "at risk" lump sum payment for facilities not owned or operated by state government only if the facility has provided Medicaid services in the current state fiscal year;
- eliminating from rule the address of the department's fiscal intermediary, which is available on the provider website; and
- including a 6.21% increase in provider rates (approximately \$187 per diem, plus any additional lump-sum amounts computed for at-risk facilities and/or direct care and ancillary services workers' wages and benefits).

Notes/Hearing: A public hearing was held on August 15, 2017. Public comment was due on August 18, 2017.

Adoption Notice Notes: The Department received several comments, which were mostly in support of the proposed amendments, and amended the rules as proposed.

MAR Notice Number: 37-790

Subject: Amend Healthy Montana Kids (HMK) dental benefit program procedures

Summary: The Department proposed to amend the HMK dental benefit procedure codes and descriptions from the 2016 version to the 2017 version, which includes the addition of codes for caries susceptibility tests, nutritional counseling, and oral hygiene instructions. The Department stated that the proposed amendment was "necessary because the federal Centers for Medicare and Medicaid Services' (CMS) approved state plan for HMK dental benefits utilizes the State of Montana Employee Dental Benefit as a benchmark. The provider of that benefit, Delta Dental, adopted use of the 2017 CDT in January 2017, which includes procedure code updates, code additions and deletions, or changes to existing code descriptions from the 2016 CDT. The department subsequently examined the 2017 CDT and recommends adoption of the same in order to maintain compliance with the CMS-approved state plan for HMK dental benefits. The HMK/CHIP dental benefit plan will include access to baby and child dentistry (ABCD) codes for qualified providers. Failure of the department to timely adopt the 2017 CDT may adversely impact the department's federal funding requirements and its operation of the HMK dental benefit program."

The Department did not anticipate any fiscal impact resulting from the proposed amendment and estimated that the proposed amendment may affect 506 dental providers and 19,191 HMK members.

Notes/Hearing: A public hearing was held on June 15, 2017. Public comment was due on June 23, 2017.

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

MAR Notice Number: 37-793

Subject: Establishment of Promising Pregnancy Care program

Summary: The Department proposed to establish a group prenatal care program known as Promising Pregnancy Care (PPC) for pregnant members of Montana Medicaid, Healthy Montana

Kids (HMK), HMK Plus, and the HELP plan. PPC provides members with information regarding nutrition, healthy lifestyle, breastfeeding, body changes in pregnancy, stress, family planning, labor education, newborn care, preventing shaken baby syndrome and SIDS, and postpartum care. Members will also participate in group classes and must engage in self-care activities. The Department anticipated that the program will have a fiscal impact of \$42,000 in fiscal year 2018 and will impact 45 federally qualified health centers, 28 rural health centers, 330 physicians, and 69,947 Medicaid members.

In addition, the Department proposed to amend ARM 37.86.4412, which pertains to reimbursement for rural health clinics and federally qualified health centers, by allowing an enhanced prospective payment system rate for approved clinics and centers that participate in PPC. The Department also proposed to amend the rule to allow a separate reimbursement for long-acting reversible contraceptives. The Department anticipated that the amendment will be budget neutral.

Notes/Hearing: A public hearing was held on June 1, 2017, and public comment was due on June 9, 2017.

**Emailed agency rule reviewer regarding the adequacy of the statement of reasonable necessity. *Amendment Notes:* The Department filed an amended proposal notice, in which the statement of reasonable necessity was amended to comply with concerns about its adequacy. The public comment period was extended to October 27, 2017.

Adoption Notice Notes: The Department received one comment expressing concern that the data provision requirements would be burdensome for providers. The Department disagreed, stating that the program is voluntary for providers to enroll in and the data requirements are necessary to measure the success of the program.

MAR Notice Number: 37-794

Subject: Physician program updates

Summary: The Department proposed amendments to:

- remove all references to the Primary Care Enhanced Payment Program because the program end in June 2015;
- update and clarify the methods in which physician-administered drugs and vaccines are priced;
- update approved forms on which to submit claims;
- change references from "birth attendant" to "direct entry midwife" in order to clarify covered services, reimbursement, and the location at which services can be performed; and
- update the physician-related services manual.

The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on June 15, 2017. Public comment was due on June 23, 2017.

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

MAR Notice Number: 37-795

Subject: Update of federal poverty index guidelines for the Montana telecommunications access program

Summary: The Department proposed to amend the maximum level of income allowed in order to be eligible for the Montana telecommunications access program. The amendment would replace the 2016 federal poverty guidelines with the 2017 guidelines. The Department anticipated no fiscal impact.

Notes/Hearing: No public hearing was held. Public comment was due on July 21, 2017.

Adoption Notice Notes: The Department received no comments and amended the rule as proposed. The Department intends to apply the amendment retroactively to February 9, 2017.

MAR Notice Number: 37-798

Subject: Changes to Children's Mental Health Bureau non-Medicaid services provider manual

Summary: The Department proposed the following revisions to the Children's Mental Health Bureau non-Medicaid services provider manual:

- setting the eligibility limit for room and board account funding and system of care account funding to provide that youth whose families have countable family income above 275% FPL will no longer be eligible for the funding and clarifying that youth must be enrolled in HMK/Medicaid and under 18 years of age to be eligible for system of care account funding;
- requiring that youth enrolled in HMK/CHIP have a therapeutic services authorization for therapeutic group home from HMK's third-party administrator; and
- clarifying permissible uses for non-Medicaid funding.

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

Adoption Notice Notes: The Department received several comments requesting clarification or expressing concern about the eligibility limit for room and board account funding. The Department amended the rule as proposed.

MAR Notice Number: 37-799

Subject: Graduate medical education payment program

Summary: The Department proposed amendments to the graduate medical education (GME) payment program to:

- add psychiatry as a type of residency training program eligible for receiving GME payment under Medicaid;
- provide that rural rotations may be included in the FTE counts for an eligible hospital in order to receive additional GME payments; and
- clarify the forms and sources of the data the Department reviews and requires from GME-eligible hospitals.

Notes/Hearing: A public hearing was held on August 24, 2017. Public comment was due on September 1, 2017.

Adoption Notice Notes: The Department received numerous comments supporting the amendments and several comments expressing concern that the length of a rural rotation that was

originally proposed (28 days) was too restrictive for how rotations work in practice. As a result, the Department amended the language to provide that a rural rotation is a period of 1 month. The Department intends to apply the amendments retroactively to August 1, 2017.

MAR Notice Number: 37-801

Subject: Adoption of new rule pertaining to Medicaid behavioral health targeted case management fee schedule

Summary: The Department proposed to adopt a new Medicaid behavioral health targeted case management (TCM) fee schedule that would align and reduce TCM rates for youth with serious emotional disturbance, individuals with substance use disorders, and adults with severe disabling mental illness. The Department stated that the proposed new rule is necessary in order to:

- reflect appropriations contained in HB 2 (2017);
- reflect mandated reductions contained in SB 261 (2017), which the Department calculated as an across-the-board reduction of 3.47%, plus an additional reduction of \$1,930,000 in SFY 2018; and
- begin the integration of behavioral health systems by standardizing reimbursements for substance use disorders and mental health.

The Department estimated that the proposed rule will result in a reduction of \$6,132,229 in all TCM funds in SFY 2018.

Notes/Hearing: A public hearing was held on July 27, 2017. Public comment was due on August 4, 2017.

Adoption Notice Notes: The Department received many comments, mostly opposing and/or questioning the 3.47% rate reduction. The Department has adopted a 2.99% rate reduction, which it intends to go into effect January 1, 2018. **The 2.99% rate reduction adopted in this rule cannot be implemented until after the next legislative session unless the Committee's November 8, 2017, objection is resolved.

MAR Notice Number: 37-802

Subject: Amendments to fee schedules for Home and Community-Based Services (HCBS) waiver programs and case management services for persons with developmental disabilities

Summary: The Department proposed the following amendments to the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for HCBS 1915c, 0208, and 0667 Waiver Programs:

- revise the manual text to reflect the Department's discontinuance of program design and monitoring, children's autism training, occupational therapy, physical therapy, speech therapy, and adaptive equipment services in the 0667 waiver, effective July 1, 2017. The Department noted that the Department was advised to discontinue certain services due to implementation of similar services that will be available in the Medicaid State Plan.
- reduce rates of reimbursement for Medicaid-funded home and community-based services. The Department stated that the rate reductions are necessary to comply with HB 2 (2017) and SB 261 (2017) reductions. The Department estimated that the proposed rate reductions will decrease total expenditures to providers for SFY 2018 by the sum of \$4,139,972 and will affect approximately 70 corporate providers of services.

The Department also proposed to amend the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Year of Age or Older or Who Reside in a Children's Community Home by reducing rates of reimbursement. The Department estimated that the proposed amendment would reduce total expenditures to providers of developmental disabilities case management services by the sum of \$163,445 in SFY 2018 and would affect approximately three contracted agencies.

Notes/Hearing: A public hearing was held on July 27, 2017. Public comment was due on August 4, 2017.

Adoption Notice Notes: The Department received many comments, mostly opposing and/or questioning the 3.47% rate reduction. The Department has adopted a 2.99% rate reduction, which it intends to go into effect January 1, 2018. **The 2.99% rate reduction adopted in this rule cannot be implemented until after the next legislative session unless the Committee's November 8, 2017, objection is resolved.

MAR Notice Number: 37-804

Subject: Amendments to Low-Income Weatherization Assistance Program (LIWAP)

Summary: The Department proposed the following amendments to LIWAP, a program that assists low-income households with reducing heating costs and addressing heating-related health and safety issues:

- revise terminology to refer to the Program Compliance Bureau (PCB), which was formerly known as the Audit and Compliance Bureau;
- provide that PCB will conduct program violation investigations rather than the Department of Justice and require that reports of possible program violations be referred to the Department's Intergovernmental Human Services Bureau before being referred to PCB;
- replace terms such as "theft" and "fraud" with "program violation"; and
- adopt and incorporate the 2017 versions of the Weatherization Assistance Program Manual, 10 CFR, part 440, and the National Renewable Energy Laboratory Standard Work Specifications, which do not contain substantive changes.

The Department estimated that 20,000 households in Montana will qualify for weatherization benefits this year.

Notes/Hearing: A public hearing was held on August 10, 2017. Public comment was due on August 18, 2017.

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

MAR Notice Number: 37-805

Subject: Revision of nursing facility reimbursement rates for SFY 2018 (effective October 1, 2017)

Summary: The Department proposed a new rule, effective October 1, 2017, that reduces the provider reimbursement rate proposed in MAR 37-789 by 2.64%, resulting in an approximate per diem reimbursement of \$182. The Department states that the reduction is necessary to stay

within the HB 2 (2017) appropriations and SB 261(2017) reductions.

Notes/Hearing: A public hearing was held on August 15, 2017. Public comment was due on August 18, 2017.

**The Committee received public comment in June expressing concern regarding this proposed rule and the manner in which the Department is implementing HB 618 (2017).

Adoption Notice Notes: The Department received many comments, mostly opposing and/or questioning the 3.47% rate reduction. The Department has adopted a 2.99% rate reduction, which it intends to go into effect January 1, 2018. **The 2.99% rate reduction adopted in this rule cannot be implemented until after the next legislative session unless the Committee's November 8, 2017, objection is resolved.

MAR Notice Number: 37-806

Subject: Montana medical marijuana program

Summary: The Department proposed to adopt three rules, which pertain to allowable amounts, testing laboratories, and chemical manufacturing endorsements, in order to administer the Montana medical marijuana program. The proposed new rules are the same rules that were adopted as emergency rules on July 7, 2017. The Department stated that the "rules are proposed to replace the emergency rules and allow for the transition period between the emergency rules and when the department will further adopt rules to implement the provisions of Senate Bill 333." The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on August 24, 2017. Public comment was due on September 1, 2017.

Adoption Notice Notes: The Department received one comment in support of the rules and adopted the rules as proposed.

MAR Notice Number: 37-807

Subject: Amendment pertaining to birth certificate gender designations and issuance of replacement certificates

Summary: The Department proposed to amend administrative rules pertaining to the correction of birth certificate gender designations by:

- defining the term "intersex condition";
- providing that birth certificate gender designations may be corrected upon the filing of a correction affidavit and (1) a gender designation form certifying that the person has undergone gender transition or has an intersex condition; (2) a government-issued identification displaying the correct gender; or (3) a certified copy of an order from a court with jurisdiction stating that the gender of a person born in Montana has been changed (administrative rule currently provides for amendment upon the filing of a court order stating that the sex of a person born in Montana has been changed via a surgical procedure); and
- providing that a birth certificate with a gender designation correction will not show the amendment and the old birth certificate will be placed in a sealed file.

The Department anticipated no fiscal impact.

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

October 20, 2017.

Adoption Notice Notes: The Department received numerous comments, including comments in support of the proposed amendments and comments opposing the proposed amendments and/or questioning the Department's rulemaking authority. The Department amended the rules as proposed and intends to apply the amendments retroactively to December 9, 2017.

MAR Notice Number: 37-808

Subject: Amendment and repeal of rules pertaining to the Health and Economic Livelihood Partnership (HELP) program

Summary: The Department proposed to amend and repeal rules pertaining to the HELP program in order to reflect the Senate Bill 261 (2017) requirement that the Department may no longer contract with a third-party administrator (TPA) to administer the HELP program. Program participants who are currently served by the TPA will be transitioned to standard Medicaid administered by the Department. The contract with the TPA expires December 31, 2017, and the Department intends for the proposed rulemaking to be effective January 1, 2018.

The Department anticipated that the businesses of nine licensed addiction counselors (LACs) will be impacted by the rule change because LACs are currently allowed to contract with the TPA as in-network providers, but they are not allowed to do so under Medicaid unless they are associated with a federally qualified health center, rural health center, Indian health service, or chemical dependency clinic.

Notes/Hearing: A public hearing was held on November 6, 2017. Public comment was due on November 10, 2017.

Adoption Notice Notes: The Department received no comment and amended and repealed the rules as proposed.

MAR Notice Number: 37-809

Subject: Amendment of rules pertaining to child support guidelines for the calculation of support obligations

Summary: The Department proposed the following amendments to rules pertaining to child support enforcement services:

- as a result of changes in federal regulations, insert a definition of "incarceration," clarify the circumstances that support imputation of income to a parent, clarify that persons who are incarcerated should not be considered voluntarily unemployed or underemployed, and provide for modification of support for incarcerated parents;
- provide for a child support credit for veteran's benefits;
- in Child Support Enforcement Division services in non-TANF cases, provide that applicants will waive collections on interest held in exchange for IV-D services;
- allow persons to email documents to the office of the administrative law judge; and
- align the license suspension financial hardship payment plan process with the income withholding hardship process.

Notes/Hearing: A public hearing was held on November 2, 2017. Public comment was due on November 10, 2017.

Adoption Notice Notes: The Department received two comments concerning the wording of two

of the proposed amendments and, outside of a change clarifying wording, amended the rules as proposed.

MAR Notice Number: 37-810

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

Summary: The Department proposed to update the effective dates of Medicaid fee schedules to January 1, 2018, to allow the Medicaid program to adopt updates to procedure codes that the federal Medicare program will enact in January 2018. The Department stated that the amendments are necessary because Medicare enacts routine updates every January, and Montana Medicaid, which uses Medicare procedure codes for billing, must adopt the changes. The proposed amendments include:

- amend the effective date from January 1, 2017, to January 1, 2018, for the Medicare physician fee schedule, RBRVS fee schedule, hearing aid services fee schedule, optometric fee schedule, chiropractic fee schedule, and lab and imaging fee schedule. The Department stated this will allow the Department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.
- amend the FQHC and RHC education health services from January 1, 2017, to July 1, 2017, to align with the state plan;
- update the outpatient drug reimbursement for dispensing fee ranges to reflect the revisions made to the pharmacy state plan, to revise the minimum dispensing fee amount to reflect the lowest calculated cost to dispense, and to remove the reference to a separate out-of-state dispensing fee;
- adopt the Region D Supplier Manual, effective January 1, 2018, for covered durable medical equipment, local coverage determinations, and national coverage determinations; and
- update the prosthetic devices, durable medical equipment, and medical supplies fee schedule to January 1, 2018. ****NOTE:** *The Department proposed to amend this fee schedule last interim, and the Committee informally objected to the proposed rule. The objection was resolved when the Department took no action on the proposed rule. In the current proposal notice, the Department stated that updating the fee schedule to the 2018 calendar year is in order to comply with the 21 Century Cures Act, which requires all state Medicaid programs to make no fee for service payments for DME that exceed the DMEPOS fee schedule amount, including, as applicable, those items included under a competitive acquisition program as described at 42 USC 1395w--3.*

The Department determined that the proposed rule will directly and significantly impact small businesses. The Department noted that the proposed amendments are required by CMS and that no alternative methods are available that would minimize or eliminate potential negative impacts. ****NOTE:** *The Department's fiscal impact statement indicated that for FY 2018, the total funds available for 442 durable medical equipment providers will be reduced by \$1,551,387.*

Notes/Hearing: A public hearing was held on December 5, 2017. Public comment was due by 5 p.m. on December 7, 2017.

Adoption Notice Notes: Except as noted below, the Department amended the rules as proposed. The Department received two comments expressing concern that optometrists are not being reimbursed the same as ophthalmologists and responded that optometrists are not subject to the physician conversion factor. The Department received comments expressing concern with the durable medical equipment fee schedule and responded that no alternatives exist. The Department also received a comment concerning the education health services fee schedule for rural health centers and federal qualified health centers and amended the effective date to January 1, 2018.

MAR Notice Number: 37-812

Subject: Amendment of physician-related services manual

Summary: The Department proposed amendments to the physician-related services manual to comply with standards set by Section 508 of the Rehabilitation Act of 1973, which requires software and website accessibility for disabled individuals. The amendments include:

- formatting and editing changes;
- the addition of sections for mobile imaging and direct-entry midwife; and
- updating claim processing procedures to reflect current practice.

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

**One of the implementing statutes has been repealed -- emailed the Department.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The Department intends to apply the amendment retroactively to December 1, 2017.

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