



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

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

### 65th Montana Legislature

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August 22, 2017

To: Children, Families, Health, and Human Services Interim Committee  
From: Alexis Sandru, Staff Attorney  
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 13 through 16

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 June 2017 meeting.

### PROPOSAL NOTICES

#### **MAR Notice Number:** 37-736

Subject: Medicaid substance use disorder services

Summary: The Department is proposing 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 states 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 anticipates that this will result in a fiscal impact of \$3,845,972 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 is due by 5 p.m. on September 1, 2017.

**MAR Notice Number:** 37-768

Subject: Amendment and repeal of certain targeted case management services

Summary: The Department is proposing 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 CMS, including updating definitions, eligibility requirements, reimbursable services, provider requirements, reimbursement methodology, and reporting requirements. The Department anticipates no fiscal impact.

The Department is also proposing 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.

**MAR Notice Number:** 37-788

Subject: Update of non-Medicaid and Medicaid fee schedules

Summary: In anticipation of decreases in revenues, the Department is proposing 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 has calculated the necessary reduction at 3.47%.

Health Resources Division proposes to reduce provider reimbursements by \$3,922,143 in state funds plus corresponding federal funds. Senior and Long Term Care Division proposes to reduce reimbursements by \$841,682 in state funds plus corresponding federal funds. Addictive and Mental Disorders Division proposes to reduce reimbursements by \$910,800 in state funds plus corresponding federal funds. Developmental Services Division--Children's Mental Health Bureau proposes to reduce reimbursements by \$1,548,283 in state funds plus corresponding federal funds. Comprehensive School and Community Treatment funds are 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. \*\*The Committee objected to the proposed rule on 7/26/17.

**MAR Notice Number:** 37-789

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

Summary: The Department is proposing 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 nonstate government owned or operated facilities 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. \*\*See MAR 37-805, the adoption of which will reduce provider rates proposed in this rule.

**MAR Notice Number:** 37-799

Subject: Graduate medical education payment program

Summary: The Department is proposing 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 is due by 5 p.m. on September 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 is proposing 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 states 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 has 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 estimates 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. \*\*The Committee objected to the proposed rule on 7/26/17.

**MAR Notice Number:** 37-802

Subject: Amendments to fee schedules for home and community-based services waiver programs and case management services for persons with developmental disabilities

Summary: The Department is proposing the following amendments to the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (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 notes 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 states that the rate reductions are necessary to comply with HB 2 (2017) and SB 261 (2017) reductions. The Department estimates 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 is also proposing 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 estimates 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 3 contracted agencies.

Notes/Hearing: A public hearing was held on July 27, 2017. Public comment was due on August 4, 2017. \*\*The Committee objected to the proposed rule on 7/26/17.

**MAR Notice Number:** 37-804

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

Summary: The Department is proposing 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 estimates 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.

**MAR Notice Number:** 37-805

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

Summary: The Department is proposing 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). The Committee objected to the proposed rule on 7/26/17.

**MAR Notice Number:** 37-806

Subject: Montana medical marijuana program

Summary: The Department is proposing 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 states 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 anticipates no fiscal impact.

Notes/Hearing: A public hearing was held on August 24, 2017. Public comment is due by 5 p.m. on September 1, 2017.

**ADOPTION NOTICES**

**MAR Notice Number:** 37-791

Subject: Revision of Medicaid outpatient drug reimbursement amounts

Summary: The Department proposed to change how Medicaid-enrolled pharmacies that fail to respond to the dispensing fee questionnaire are reimbursed and to clarify how provider pharmacies are reimbursed for hemophilia drugs.

The Department anticipated that the proposed revisions will result in an increase of \$19,892 in minimal dispensing fees and will potentially affect 169,451 Medicaid members and 281 enrolled pharmacies.

Notes/Hearing: A public hearing was held on May 19, 2017, and public comment was due on May 26, 2017.

*Adoption Notice Notes:* The Department received no public comment and amended the rule as proposed. The amendment was effective July 1, 2017.

**MAR Notice Number:** 37-796

Subject: Revision of early and periodic screening, diagnostic and treatment (EPSDT) benefits

Summary: The Department proposed to amend EPSDT rules to reflect current practices and

current resources, including:

- providing that the number and timing of screenings should follow the American Academy of Pediatrics Bright Futures schedule;
- providing that caregiver depression screenings are covered for caregivers of children under age 1 and that positive screenings should be referred for follow-up care; and
- requiring that there must be documented medical necessity by a child's primary care provider for a child to receive chiropractic services and requiring that the treatment be directly related to a neuromuscular diagnosis of the spine.

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 one comment in support of the amendments and amended the rules as proposed.

**MAR Notice Number:** 37-803

Subject: Emergency rules for the Montana Medical Marijuana Program

Summary: The Department adopted three emergency rules relating to the Montana Medical Marijuana Program:

- Rule 1: Sets the allowable amount of marijuana that may be possessed by registered cardholders, providers, and marijuana-infused products providers;
- Rule 2: Allows the Department to issue temporary licenses to testing laboratories; and
- Rule 3: Allows the Department to issue temporary endorsements for chemical manufacturing.

The rules went into effect June 30, 2017.

Notes/Hearing: \*\*Pursuant to 2-4-303, MCA, the emergency rules may be in effect for a period not longer than 120 days.

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