



Children, Families, Health, and Human Services Interim Committee

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60th Montana Legislature

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TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: DPHHS Administrative Rule Activity
DATE: March 6, 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. 2 (January 31, 2008), MAR Notice No. 37-420, NOTICE OF AMENDMENT AND REPEAL -- a public hearing was held December 4, 2007 to consider the amendment of four rules and the repeal of four rules pertaining to the child care assistance program. No one appeared at the hearing to testify and 10 written comments were received. These rules pertain to payment for child care services provided to parents eligible for benefits under the Child Care and Development Block Grant Act of 1990 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The department updated the Montana Child Care Manual which contains the policies and procedures utilized in the implementation of the department's child care assistance program and which are incorporated into the ARM by reference. Amendments to ARM 37.80.201 provide that the department cooperate with the child support enforcement division by maintaining an open case when a case can be established. Further amendments to that rule specify that any licensed or registered child care provider is not eligible for child care assistance while a child attends a public or private school. Based on a comment asking that legal school age be defined in ARM 37.80.201(11), the department clarified the language with the following: Any licensed or registered child care provider is not eligible for child care assistance for children who fall within the age groups traditionally served by the public school system, or alternatively a private or home school and who are attending said school for educational purposes during traditional school hours. The department will not pay for child care assistance during normal school hours when a child is home schooled.

II.

MAR 2008 Issue No. 2 (January 31, 2008), MAR Notice 37-424, NOTICE OF ADOPTION -- a public hearing was held January 14, 2008 to consider the proposal of eight new rules pertaining to newborn hearing screening. No one appeared at the hearing to testify and no written comments were received. These rules make newborn hearing screening mandatory for all infants born in Montana hospitals or health care facilities and for all infants born outside a hospital or health care facility who are attended to by a licensed health care provider. These changes came

about as a result of HB 117, 2007, which amended the MCA's Newborn Hearing Screening statutes and requires: 1) newborn hearing screening; 2) parental education regarding hearing loss, the importance of early intervention in cases in which a hearing loss is detected, and the methods used to conduct newborn hearing screening; 3) referral for further testing and follow-up by three months of age in cases in which the initial screening identifies a possible hearing loss; and 4) that screening results and audiological assessments be reported to the department and, in cases in which a hearing deficiency has been identified, shared with the Montana School for the Deaf and Blind.

III.

MAR 2008 Issue No. 3 (February 14, 2008), MAR Notice 37-425, NOTICE OF AMENDMENT -- a public hearing was held January 14, 2008 to consider the proposed amendment of five rules pertaining to automated external defibrillators. No one appeared at the hearing to testify and four written comments were received. As a result of the comments, the department changed the word "standards" to "guidelines" to be consistent with the wording the American Heart Association uses in its documents. These changes to the existing rules broaden the category of health professionals licensed in Montana who are qualified to supervise Automated External Defibrillator (AED) programs, reflecting the 2007 legislature's desire that while medical oversight of an AED program is required, it need not be by a physician. These rule changes further reflect the legislature's requirement that the department set guidelines for the medical oversight of an AED program and update the training requirements that the department has set for persons who are trained to operate an AED.

IV.

MAR 2008 Issue No. 3 (February 14, 2008), MAR Notice 37-426, NOTICE OF ADOPTION -- a public hearing was held January 14, 2008 to consider 16 new rules pertaining to home and community services for seriously emotionally disturbed youth. No comments or testimony were received, although the department did modify one rule on its own. The \$200 limitation on goods and services per youth had been based on a fiscal year; the department noted it would be more accurate to say "\$200 for each annual period beginning with the youth's most recent date of enrollment in the waiver" since enrollment can happen at any time during the year. These rules implement a new type of Medicaid funded home and community waiver program designed to serve youth with severe emotional disturbance in their communities as opposed to placement in restrictive residential youth treatment facilities. These services allow for Medicaid coverage that is not available through the existing standard set of mental health services funded with Medicaid monies. The department notes that these rules were modeled after rules governing similar home and community services within the department funded by Medicaid (for individuals with developmental disabilities, elderly or physical disabilities, brain injuries, or adults with severe mental illness) and are based on federal requirements. When the program is fully implemented during SFY 2009, expenditures under the program are projected to be approx. \$1.3 million--30% state general fund and 70% federal Medicaid monies. When fully implemented, the service will provide for 100 slots statewide. Because this is a pilot program, the state has obtained permission to incrementally implement it in a limited set of counties. The first county offering the Home and Community Services for Youth Program with Serious Emotional Disturbance is Yellowstone

County with 20 slots. As other locales are selected, the rules will be amended to add the new areas.

Notices of Proposed Rules:

V.

MAR 2008 Issue No. 3 (February 14, 2008), MAR Notice 37-428, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE in the matter of the proposed amendment of one rule pertaining to components of quality assessment activities. No public hearing is contemplated. The comment period runs until March 13, 2008. 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 applied retroactively to January 1, 2008.

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

VI.

MAR 2008 Issue No. 3 (February 14, 2008), MAR Notice 37-429, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION -- the department has filed a NOTICE OF HEARING in the matter of the proposed adoption of ten new rules pertaining to 72-hour presumptive eligibility for adult crisis stabilization services. A hearing was held March 5, 2008 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until March 13, 2008. 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.

Rule 1: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Definitions
Contains 18 definitions such as "crisis" (defined as a serious unexpected situation resulting from an individual's apparent mental illness in which the symptoms are of sufficient severity, as determined by a mental health practitioner, to require immediate care to avoid death or bodily harm to the individual or others) and "presumptive eligibility" (defined as a period of up to 72 hours during which time-limited mental health crisis stabilization services delivered to an individual experiencing a crisis will be reimbursed by the department).

Rule II: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Crisis Management Services

May include observation, support or training for self-management, monitoring behaviors after medication, psychotropic medications administered during the 72 hour crisis period, and laboratory services.

Rule III: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Crisis Stabilization Plan

Contains seven items such as identifying the person to serve as crisis care manager, addressing cultural considerations, identifying support network options, and identifying referral and transition activities.

Rule IV: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Reimbursable Services

Must be medically necessary mental health services, delivered in direct response to a crisis, limited in scope and duration, delivered or contracted for by a crisis stabilization provider and are limited to such events as a psychiatric diagnostic interview examination, care coordination, individual psychotherapy, etc.

Rule V: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Reimbursement for Services

Reimbursement for services will be the amounts listed in the Crisis Stabilization Services Fee Schedule dated March 1, 2008 and limited in accordance with the enrollment agreement between the department and the crisis stabilization provider up to the maximum allowable fee.

Rule VI: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Reimbursement Exclusions

Items not reimbursable include services defined as "nursing facility services" in ARM 37.40.302, any form of transportation, services pursuant to a civil commitment, and medical services not directly related to crisis stabilization services.

Rule VII: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Where Services May be Provided

There is no restriction on where crisis stabilization services under these rules may be delivered.

Rule VIII: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Confidentiality Requirements

For all individuals served, including persons assessed but not determined eligible, providers must comply with the record keeping and confidentiality requirements that apply to Medicaid providers under ARM 37.85.414.

Rule IX: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Claims and Reimbursement

All provider claims for reimbursement must be submitted to the department's Medicaid Management Information System (MMIS) contractor. Providers must accept the amounts payable under these rules as payment in full for services delivered to eligible individuals. Services delivered to individuals experiencing a crisis may not be reimbursed if they are delivered to an individual within seven days following discharge from crisis stabilization services delivered by this or another provider (provider may request a review if denied), were not approved for reimbursement for the department, or the provider is not enrolled with the department.

Rule X: 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services: Limitations

These rules do not establish an entitlement to reimbursement for services delivered to any individual or an entitlement to receive any services under this program. The department reserves the right to suspend or restrict services as might be necessary and must give 10 days notice when doing so. 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.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted. Committee legal staff attended the hearing on March 5, 2008 and no one appeared to testify. Department legal staff expect there will be a few written comments which will need to be addressed before these rules will be adopted.

VII.

MAR 2008 Issue No. 4 (February 28, 2008), MAR Notice 37-430, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF HEARING in the matter of the proposed amendment of one rule pertaining to Vocational Rehabilitation Program payment for services. A hearing will be held March 19, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until March 27, 2008. The department is proposing to amend 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 2007 federal poverty guidelines for households. The proposed rule substitutes 2008 guidelines for 2007 guidelines as implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

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

VIII.

MAR 2008 Issue No. 4 (February 28, 2008), MAR Notice 37-431, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF HEARING in the matter of the proposed amendment of one rule pertaining to the Low Income Energy Assistance Program (LIEAP). A hearing will be held March 19, 2008 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until March 27, 2008. 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.

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

IX.

MAR 2008 Issue No. 4 (February 28, 2008), MAR Notice 37-432, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION -- the department has filed a NOTICE OF HEARING in the matter of the proposed adoption of two new rules pertaining to general Medicaid services, physician administered drugs. A hearing will be held March 25, 2008 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The comment period runs until March 27, 2008. The purpose of these two new rules is to comply 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 (CMA) 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 will require providers to report NDCs along with healthcare common procedures coding system (HCPCS) codes on all payable physician administered drugs. This does not apply to providers who are paid an all inclusive rate per visit, such as Rural Health Clinics or Indian Health Services, because the drug is considered bundled into the payment for primary service provided at the visit. The department will deny reimbursable claim lines with dates of service on or after April 1, 2008 that do not report an NDC or are not manufactured by companies that have a signed rebate agreement with CMS (over 400 drug manufacturers have signed rebate agreements with CMS so rebateable drugs should be readily available to providers). For claims in which a line is denied, providers will have 365 days from the date of service to submit an adjustment or new claim to receive payment. Rebates are obtained from the drug manufacturers within three months of reporting the NDCs. The rebates are deposited in the state general fund and the federal matching assistance percentage is returned to the federal government based on the date of service. The department expects the two new rules to bring in rebates of approximately \$81,396 for SFY 08 and \$325,584 for SFY 09 (state's portion of rebate funds determined after federal reimbursement made).

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

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