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Children, Families, Health, and Human Services Interim Committee

61st Montana Legislature

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TO: Committee members

FROM: Lisa Mecklenberg Jackson, Staff Attorney

RE: DPHHS Administrative Rule Activity

DATE: April 16, 2010

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/)*

Notices of Proposed Rules:

I.

MAR 2010 Issue No. 7 (April 15, 2010), MAR 37-503, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed adoption of one new rule and the amendment of five rules pertaining to Medicaid reimbursement of children's mental health services. A hearing will be held May 6, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until May 13, 2010. The department is proposing a new rule adopting and incorporating the Medicaid and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule (fee schedule) and the Medicaid Mental Health and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (service matrix). The Department received requests from providers to organize the children's mental health Medicaid and Mental Health Services Plan rules in one section so they would be easier to find. The Department is proposing the following changes to the service matrix so it will be easier to understand: 1. Specify that moderate level therapeutic family care and permanency level therapeutic family care may not be reimbursed on the same day; and 2. specify that no other mental health service on the service matrix will be reimbursed on the same day as psychiatric residential treatment services with the exception of the day of admission and/or discharge. A requirement is being added that if the discharge plan does not evolve adequately during a youth's stay in a PRTF, continued authorization for PRTF will be denied. Discharge planning is already a PRTF requirement and one criteria for continued authorization. However, discharge plans are frequently inadequate to step the youth down to a lower level of care on time, before going out to a community setting. Clarification is being added to indicate permanency level therapeutic family care services will only be authorized in foster care homes and not authorized in biological or postadoption homes. The department is proposing more specific language regarding

authorization requirements including prior and continued authorizations in ARM 37.87.903. Both prior and continued authorizations are needed before a service is provided to a Medicaid recipient. The Department is proposing rules that waive the authorization requirement for 10 business days because of a clinical reason or failure of the Department's equipment. The Department is proposing the rule changes be effective July 1, 2010.

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

II.

MAR 2010 Issue No. 7 (April 15, 2010), MAR 37-502, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed amendment of two rules pertaining to Medicaid reimbursement for psychiatric residential treatment facility (PRTF) services. A hearing will be held May 6, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until May 13, 2010. The proposed amendments are necessary to make it clear that out-of-state psychiatric residential treatment facilities (PRTFs) must be certified by the state in which the facility is located to participate in the Montana Medicaid program, as required by CMS. The department is currently unable to authorize admissions to out-of-state PRTFs that are not currently certified. As a result, some youths eligible for Montana medicaid benefits might not receive needed mental health treatment or treatment might be delayed. In SFY 2009, for both in-state and out-of-state PRTFs, 431 youth received Medicaid services for a total expenditure of $12, 975,766. It is anticipated that in-state PRTFs or other out-of-state enrolled and certified PRTFs will be able to serve youth previously referred to the noncertified PRTFs. the department also anticipates some of the noncertified out-of-state PRTFs to become certified in the near future. The department intends to apply these rules retroactively effective February 1, 2010.

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

III.

MAR 2010 Issue No. 6 (March 25, 2010), MAR 37-501, NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed repeal of one rule pertaining to Title V maternal and child health block grant. A hearing will be held April 22, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until April 23, 2010. The department is proposing the repeal of ARM 37.57.1001 pertaining to the Title V maternal and child health block grant. The department determined that requirements found in the rule are more appropriately suited to a contract format as the maternal and child health block grant contract is issued yearly to contractors and incorporates the requirements. There is no state or federal law that requires ARM 37.57.1001.

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

IV.

MAR 2010 Issue No. 6 (March 25, 2010), MAR 37-500, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed amendment of two rules and the repeal of two rules pertaining to standards for providers of services funded through certain disability transitions programs. A hearing was held April 14, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until April 23, 2010. These rule changes pertain to the standards for providers of services for vocational rehabilitation, blind and low vision services, older blind, visual medical, extended employment services, or independent living services. The current rules reference an accreditation process that no longer exists. ARM 37.30.1001 specifies the Disability Transitions Programs to which provider standards would be applicable and contains express authority for the department to undertake quality assurance on and off site reviews and to take action that fosters the delivery of services to meet the consumer's needs. The proposed amendments to ARM 37.30.1002 would remove the required applicability to independent living services of the standards of the National Council on Disability which no longer provides standards for this purpose. Instead, the department is proposing that an independent living center may be enrolled by the department based upon its recognition and direct funding by the federal Department of Education, Rehabilitation Services Administration, as an independent living center that meets the pertinent federal standards governing independent living facilities. The amendments to ARM 37.30.1002 would also incorporate the standards of the Rehabilitation Services Accreditation System (RSAS) to rehabilitation services; the standards did not exist when the rule was originally adopted. The proposed amendment also allows for the department to enroll service programs approved as providers by another state or federal program.

V.

MAR 2010 Issue No. 6 (March 25, 2010), MAR 37-499, NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed repeal of one rule pertaining to Title V maternal and child health block grant. A hearing will be held April 22, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until April 23, 2010.

Notices of Adopted Rules:

VI.

MAR 2010 Issue No. 1 (January 14, 2010), MAR 37-498, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE OF AMENDMENT regarding the proposed amendment of three rules pertaining to administrative review of fair hearing decisions. No public hearing is contemplated. The comment period runs until February 11, 2010. The Child and Family Services Division (CFSD) of the department proposes to amend ARM 37.47.610(6) to allow a means by which fair hearing decisions may be reviewed administratively before becoming final agency decisions. Currently, these decisions may only be reviewed by appealing to district court. CFSD believes this proposed change will allow parties who may not have the means or desire to go to district court to potentially preempt the necessity of doing so by asking the director to consider the proposed decision, the exceptions filed, briefs and oral argument, and

the record of the hearing before allowing the proposed decision to become final. The proposed administrative review process is already being used by other divisions in the department and, accordingly, adoption of this proposed change would make CFSD's review process consistent with that being used elsewhere in the department.

II.

MAR 2009 Issue No. 24 (December 24, 2009), MAR 37-497, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE OF AMENDMENT regarding the proposed amendment of one rule pertaining to components of quality assessment activities. No public hearing is contemplated. The comment period runs until January 21, 2010. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA), established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in administrative rules. ARM 7.108.501 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 effectiveness data and information set (HEDIS) measures, nationally utilized measures that are updated annually. Since the HEDIS standards change somewhat each year, the rule must also 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 proposal changes the date of reference for the HEDIS measures from 2009 to 2010.

III.

MAR 2009 Issue No. 24 (December 24, 2009), MAR 37-496, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed adoption of three new rules, the amendment of seven rules, and the repeal of one rule pertaining to emergency medical services (EMS). A hearing was held January 13, 2010 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until January 21, 2010. The proposed changes are necessary to implement changes made during the 2009 Legislature (HB 93--sponsors Representative Sands, and Senators Laible and Juneau have been notified), to clarify issues raised in a 2008 legislative performance audit and to modify various rules that were outdated and confusing. The three proposed new rules clarify the personnel necessary for a service licensed as an intermediate level service, a "new" level of service, which must be able to reasonably provide an intermediate level of care 24 hours a day, seven days a week.* The department is proposing a new definition for "service medical director" in ARM 37.104.101 which matches the definition in HB 93 and clarifies that a service medical director must meet requirements for being an EMT medical director under rules promulgated by the Board of Medical Examiners. Similarly, ARM 37.104.218(2) is necessary to reference a new definition for offline medical direction that was adopted in HB 93. ARM 24.156.2771 outlines how out-of-state EMTs may be authorized to provide either basic or advanced life support during emergencies. Most of the proposed rule repeals relate to information that is no longer needed after the department began converting EMS service licensing records to an electronic system over the last several months.

TECHNICAL NOTE: The proposed rules were reviewed by committee legal staff and no technical problems were noted. Rules relating to another 2009 CFHHS-sponsored EMS bill (HB 85) are being drafted by the Department of Transportation and a draft copy was sent to bill sponsors Representative Sands and Senator Laible. These rules provide for a grant program for emergency medical service providers for emergency response vehicles or equipment and require MDT to administer the grant program including the establishment of criteria for the grant and the weighing of those criteria, reasons for not awarding the grant, providing an appeal process, and establishing the reporting requirements for the grant program.

*For committee clarification, I asked Jim DeTienne, EMS and Trauma Systems, DPHHS, to explain the differences between basic, intermediate, and advanced life support services in terms of duties and personnel required: A Basic Life Support service is defined under 37.104.101(10) and it is a service that uses EMT-Basics (ambulance) or EMT-First Responders (quick response units). They provide basic life support services; nothing advanced or invasive. An Intermediate Life Support service (defined under the proposed rules) is an EMS service that has enough EMT-Intermediates to reasonably assure that an EMT-I will be available on all calls, 24/7. An Advanced Life Support service, defined under 37.104.101(2), is an EMS service that has enough EMT-Paramedics to reasonably assure that a paramedic will be available on all calls, 24/7. Advanced life support is defined under 37.104.101(1) and references any provider who provides advanced life support services: 1) an EMT-Basic with ALS endorsements; 2) an EMT-Intermediate; or 3) an EMT-Paramedic. For services which have staff that are licensed and authorized to provide advanced life support services, but do not have enough staff to assure provision of those ALS services 24/7, we allow a service to be licensed at a Basic Life Support level, but be authorized to provide limited advanced life support. This licensing strategy is used by many volunteer services who have limited personnel to provide ALS and cannot assure that someone with those skills will always be available. Hence, those services are licensed at Basic Life Support but given an authorization to provide ALS when personnel are available.

IV.

MAR 2009 Issue No. 21 (November 12, 2009), MAR Notice 37-495, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING regarding the proposed adoption of one new rule and the amendment of three rules pertaining to Medicaid physician administered drug reimbursement and pharmacy outpatient drug reimbursement. A hearing was held December 2, 2009 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until December 10, 2009. Outpatient drugs and physician administered drugs are covered under Montana Medicaid. The reimbursement price Montana Medicaid pays pharmacies for outpatient drugs has two components, the cost of acquiring the drug from a manufacturer and a dispensing fee. The cost of acquiring the drug is estimated based on three possible methods, the state maximum allowable cost, estimated acquisition cost, and usual and customary charges. New Rule I describes how the department would apply these three methods to calculate the price Montana Medicaid will pay pharmacies for outpatient drugs. The proposed amendment to ARM 37.86.1105 is to consistently use the term "state maximum allowable cost." By implementing a state maximum allowable cost (SMAC) method in the pricing structure the state could save $1.1 million in general fund while ensuring a fair price for medications dispensed at retail pharmacies. The proposed amendment to ARM 37.86.105 states Montana Medicaid current practices for setting reimbursement for physician administered drugs (PADs), which generally mirror the Medicare average sales price methods. This proposed amendment impacts approximately 5,000 providers. The estimated fiscal impact of this change is a decrease of $7,828 in federal expenditures and $2,320 of state expenditures. The department intends the

proposed rule changes to be applied effective January 1, 2010.

MAR 2009 Issue No. 15 (August 13, 2009), MAR Notice 37-481, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed adoption of one new rule and the amendment of four rules pertaining to case management services for adults with severe disabling mental illness. A hearing was held September 2, 2009 in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until September 10, 2009. The department is continuing its reorganization of the rules pertaining to mental health services, splitting the rules for youth and adults into separate chapters. In these rule proposals, the department is proposing a cross reference to the term "medically necessary service" to clarify the services are reimbursable under Montana Medicaid; an expansion of the term "severe disabling mental illness" to include individuals who have demonstrated suicidal behavior or an intent to commit suicide as well as those with diagnosed post traumatic stress disorder (or PTSD); a redefinition of case management service coverage and requirements to conform to federal law; and reorganization of certain reimbursement requirements for case management services to adults with SDMI. ARM 37.86.3506 is being amended to include assurances that individuals receiving case management services are allowed the free choice of any qualified Medicaid provider and to specifically remind providers that case management services will not duplicate payments made to public agencies or private entities under the Medicaid program. The department is proposing to amend ARM 37.86.3515 to include a more detailed explanation of the 15-minute billing increment for case management services provider reimbursement. In addition, providers of services would be allowed to bill for services to individuals transitioning from an institution to a community setting for the last 60 days. These services must be coordinated with and not duplicative of institutional planning discharge. The department intends to apply the rules retroactively to July 1, 2009

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