



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

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**64th Montana Legislature**

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February 26, 2016

To: Children, Families, Health, and Human Services Interim Committee

From: Alexis Sandru, Staff Attorney

Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 1 through 4

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 (MAPA). At its June 2015 meeting, the Committee elected to receive biweekly e-mails from staff, which summarize DPHHS rule activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the mailing for the Committee's January meeting.

**The Department has proposed the following:**

**MAR Notice Number:** 37-738

**Subject:** Reduction of application and renewal fees for Montana Marijuana Act cardholder registry

**Summary:** The Department is proposing to reduce the registered cardholder application fee and annual renewal fee from \$75 to \$5. The Department states that the Montana Marijuana Program "is charged only with generating 'revenue sufficient to offset all expenses of implementing and administering [the program]' " and that, therefore, the reduction in the fee amounts is necessary because the current fee amounts of \$75 are generating excess revenues.

**Notes/Hearing:** A public hearing is scheduled on March 10, 2016, at 1:30 p.m. in the auditorium of the DPHHS building.

**The Department has adopted the following (adoption notice notes in italics):**

**MAR Notice Number:** 37-726

**Subject:** Forensic mental health facility endorsement for licensed mental health centers

**Summary:** The Department is proposing to adopt 18 new rules that establish minimum standards for a licensed mental health center to operate a secure forensic mental health facility for adults who are:

- committed to a mental health facility for evaluation of fitness to proceed;
- committed to the custody of the Department for treatment to gain fitness to proceed;
- found not guilty of a crime by reason of mental illness and who are committed to the custody of the Department for custody, care, and treatment;
- ordered to undergo a mental health evaluation as part of a presentence investigation;
- found guilty of a crime but suffering from a mental illness and who are sentenced to the custody of the Department for care and treatment;
- transferred from the Department of Corrections; or
- committed to the Montana State Hospital while serving a sentence at a correctional facility.

The Department noted the following purpose behind the proposed rules:

For some time, the department has sought to remedy the D Wing [serves forensic patients at the MSH] overcrowding through the legislative process. This effort has been unsuccessful. The need to expand the facilities available for forensic mental health services is great and growing. Therefore, the department has created a new endorsement under which a licensed mental health center can provide forensic mental health services to persons who do not need to be in a psychiatric hospital, but need to be in a secured setting. The requirements for the endorsement are intended to create a forensic mental health facility that will improve the current situation in D Wing and will address the facility issues with D Wing in terms of security, separation of residents, etc. The MSH D Wing will continue to house forensic residents.

Notes/Hearing: A public hearing was held on October 14, 2015.

Adoption Notice Notes: The Department received numerous comments, mainly pertaining to restraint and seclusion provisions, and adopted the rules as proposed, with the following changes:

- clarifying that medication administration will last no longer than 30 minutes;
- requiring a verbal or written order from a licensed health care practitioner prior to or as soon as possible after initiating seclusion or restraint;
- requiring constant in-person supervision for the first hour of restraint or seclusion;
- prohibiting simultaneous restraint and seclusion;
- requiring staff to have training in basic first aid and CPR; and
- requiring the facility to employ at least one health care practitioner.

**MAR Notice Number:** 37-728

Subject: Effective dates of Medicaid provider fee schedules

Summary: The Department is proposing to update effective dates to January 1, 2016, for certain Medicaid provider fee schedules that use Medicare pricing for procedure codes, which Medicare updates in January of each year. The Department is proposing to add 2 new dental procedure codes for adults that were recommended by the Montana Dental Association and that are evidence-based in the prevention of dental caries. The Department also has determined that it is

overpaying for incontinence supplies and is proposing to change to a set rate fee schedule that uses an average of the Idaho and Wyoming fee schedules. As required under 53-6-196, the Department has determined that the proposed dental procedure codes and method of payment for incontinence supplies can be measured by performance-based measures and will be measured by looking at expenditures in the year after adoption of the proposed changes and the year prior to the adoption of the proposed changes. The Department expects to see savings in the amount of funds paid for dental caries treatment and incontinence supplies.

Notes/Hearing: A public hearing was held on November 19, 2015.

*Amended Proposal Notice Notes:* The Department has amended the proposal notice to update the fiscal impact and statement of reasonable necessity and has indicated that the proposed amendment may directly impact small businesses. The Department anticipates that the Medicare durable medical equipment fee schedules will have a direct impact on businesses that dispense prescribed durable medical equipment and that reimbursement to these businesses will be reduced by approximately \$1,648,907 in total funds. The Department anticipates that businesses that dispense prescribed incontinence supplies will experience a reduction of \$848,917 in total funds.

*Adoption Notice Notes:* The Department received numerous comments urging the Department not to adopt the Medicare fee schedule for durable medical equipment or the incontinence fee schedule. (The Committee also objected to this proposal notice on January 8, 2016.) The Department did not proceed with the proposed amendments concerning durable medical equipment and incontinence supplies but did adopt the remaining amendments as proposed. The Department intends for the changes to apply retroactively to January 1, 2016.

**MAR Notice Number:** 37-733

Subject: Update of Medicaid hospice reimbursement fee schedules

Summary: The Department is proposing to update its Medicaid hospice reimbursement fee schedule in accordance with changes in federal hospice reimbursement rates set by CMS, effective October 1, 2015. The proposed fee schedule implements an aggregate reimbursement rate increase of 1% (\$50,000), which will apply to 54 of Montana's 56 counties. Two counties will experience a rate decrease of 0.5% to 1%. The Department intends to apply the rate increase retroactively to October 1. Any rate decrease will not be applied retroactively.

Notes/Hearing: A public hearing was held on December 2, 2015.

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

**MAR Notice Number:** 37-734

Subject: Big Sky Rx maximum premiums

Summary: The Department is proposing to change the Big Sky Rx premium benefit from \$30 to \$30.90 in order to match the Low Income Subsidy for Medicare Part D for this region as set forth by CMS in July 2015. This would result in a yearly benefit increase of \$46,839.

Notes/Hearing: A public hearing was held on December 2, 2015.

*Adoption Notice Notes:* The Department received no public comment and amended the rule as proposed. The Department intends to apply the amendment retroactively to January 1, 2016.

**MAR Notice Number:** 37-735

Subject: Update of effective dates of direct care and ancillary services workers' additional payments/reporting

Summary: The Department is proposing to update the effective date from January 1, 2015, to January 1, 2016, for direct care and ancillary services workers' additional payments and reporting requirements.

Notes/Hearing: No public hearing is scheduled.

*Adoption Notice Notes:* No public comment was received. The Department amended the rule as proposed and intends to apply the amendment retroactively to January 1, 2016.

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