



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

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### 64th Montana Legislature

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April 29, 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 5 through 8

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 March meeting.

### **The Department has proposed the following:**

#### **MAR Notice Number: 37-737**

**Subject:** Medicaid treatment limits, cost-share requirements, and coverage

**Summary:** The Department is proposing multiple amendments concerning Medicaid treatment limits, cost-share requirements, and coverage, including but not limited to the following:

- amending cost-share amounts (including imposing an aggregate cap) and exempting certain individuals and services from cost-sharing;
- requiring providers to bill and collect cost shares after the Department reimburses the provider (rather than at the time of service, which is currently happening);
- including habilitative and rehabilitative services as covered services;
- extending state plan Medicaid benefits to members who are covered through the 00181 Medicaid 1115 waiver (18 years of age or older, have severe disabling mental illness, and either have income of 0-138% of the federal poverty level and are eligible or enrolled in Medicare or have income of 139-150% of the federal poverty level);
- providing that a person categorically eligible for Medicaid as aged, blind, or disabled is not subject to the annual \$1,125 dental treatment limit;
- removing the service limits on speech therapy, physical therapy, and occupational therapy;
- changing allowable eye exam and pair of eyeglasses from 1/730 days to 1/365 days;
- removing the prior authorization requirement on inpatient medical alcohol and drug detoxification services that last over 7 days; and
- removing limits on amount of sessions of cardiac rehabilitation services and pulmonary rehabilitation services (currently limit of 36 sessions).

The Department cites the implementation of the federally required Alternative Benefit Plan as necessitating many of the above changes.

Notes/Hearing: A public hearing was held on March 24, 2016. \*\*Contacted agency rule reviewer regarding erroneous AUTH/IMP cites and clarity of draft language.

**MAR Notice Number:** 37-739

Subject: Additional inpatient beds for critical access hospitals

Summary: The Department is proposing to amend the inpatient bed limit for critical access hospitals to allow critical access hospitals to take advantage of a waiver granted under the federal Medicare Improvements for Patients and Providers Act of 2008 that allows critical access hospitals to add 10 inpatient beds for skilled nursing facility or nursing facility level services. The Department states that two Montana facilities -- McCone County Health Center and Roosevelt Medical Center -- have applied and are eligible for the bed increase, and, without the amendment, the facilities will not be able to take advantage of the waiver opportunity.

Notes/Hearing: A public hearing was held on March 24, 2016.

**MAR Notice Number:** 37-741

Subject: Increase in fees for certain certified copies of vital records

Summary: As mandated by HB 223 (2015), the Department is proposing to charge fees in the following amounts for death certificates, with \$3 of each fee deposited into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service: \$15 for the first certified copy of a death certificate; \$8 for each additional copy requested at the same time; and \$13 for informational copies. The Department is also proposing to charge a fee of \$12 for certificates of adoption and rescission of adoption and amendments to vital records. The Department states that this is necessary because some of the activities involve substantial amounts of staff time and the fees currently do not cover the actual cost of these activities.

Notes/Hearing: A public hearing was held on March 24, 2016.

**MAR Notice Number:** 37-744

Subject: Eliminate the Children's Special Health Services Financial Assistance Program

Summary: The Department is proposing to eliminate the Children's Special Health Services (CSHS) financial assistance program, which currently serves approximately 20 families and has been experiencing a steady decline in enrollment over the last several years. The CSHS financial assistance program follows the same poverty guidelines as the Healthy Montana Kids (HMK) program, so the Department has notified the affected families and encouraged them to apply for the HMK program. If a family does not qualify for the HMK program or chooses not to apply, the maximum impact to the family is \$2,000 per year. The funds saved by eliminating the CSHS financial assistance program will be redirected to programs that can be utilized by all youth with special health care needs in Montana.

Notes/Hearing: No public hearing is scheduled. The Department intends to apply the repeal of the rules retroactively to March 31, 2016.

**MAR Notice Number:** 37-745

Subject: Revision of fee schedules for Medicaid provider rates

Summary: The Department is proposing provider rate increases to reflect appropriations contained in HB 2 (2015).

Notes/Hearing: A public hearing is scheduled on May 12, 2016, at 10:30 a.m. in the auditorium of the DPHHS building.

**MAR Notice Number:** 37-746

Subject: Changes to Medicaid pharmacy reimbursement

Summary: The Department is proposing to increase professional dispensing fees for Montana Medicaid pharmacy providers and to modify the drug reimbursement calculation. The Department is proposing to change the outpatient drug ingredient reimbursement by eliminating the current estimated acquisition cost reimbursement methodology and replacing it, in accordance with federal guidelines, with a new methodology referred to as average acquisition cost, which is based on drug invoice data and sets drug ingredient reimbursement as close to actual acquisition as possible. The proposed rulemaking will require all providers to submit their actual acquisition cost and usual and customary charge to Montana Medicaid. The proposed rule amendments will have an administrative cost of \$139,583.31 (FY16) and \$141,666.64 (FY17) and is expected to result in a projected cost savings of \$4.3 million. The Department has determined that the proposed rulemaking directly and significantly impacts small businesses. The group of small businesses that will be affected are pharmacies enrolled in Montana Medicaid that have fewer than 50 employees. It is estimated that the affected businesses will see a reduction on average of \$2.56/Montana Medicaid pharmacy claim.

Notes/Hearing: A public hearing is scheduled on May 12, 2016, at 1:30 p.m. in the auditorium of the DPHHS building.

**MAR Notice Number:** 37-748

Subject: Nursing facility reimbursement/update of terminology

Summary: The Department is proposing to amend rules pertaining to Medicaid nursing facility reimbursement to implement the HB 2 (2015) provider rate increase and to update outdated terminology (replacing references to individual with mental retardation with references to individual with intellectual disabilities) to reflect current usage.

Notes/Hearing: A public hearing is scheduled on May 12, 2016, at 2:30 p.m. in the auditorium of the DPHHS building.

**MAR Notice Number:** 37-750

Subject: Amendment of rules pertaining to hospitals, inpatient hospitals, rural health clinics, and federally qualified health centers.

Summary: The Department is proposing to amend rules pertaining to hospitals, inpatient hospitals, rural health clinics, and federally qualified health centers in order to update:

- dates and claim forms;
- reimbursement policies for all patient refined - diagnosis related groups (APR-DRGs) inpatient hospitals (calculate claim reimbursement at the lesser of the assigned APR-DRG

rate or the claim billed charges (methodology is used throughout the Medicaid program));  
and

- definitions applicable to rural health clinics and federally qualified health centers.

Notes/Hearing: A public hearing is scheduled on May 12, 2016, at 9:30 a.m. in the auditorium of the DPHHS building.

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

**MAR Notice Number:** 37-722

Subject: Child Care Assistance

Summary: The Department is proposing the following amendments to the Best Beginnings Program, which provides low-income parents and guardians financial assistance for day care:

- amend the Montana Child Care Manual (revising terminology, adding definitions, revising provisions related to special needs children, revising work requirements, providing for 12-month eligibility and annual eligibility redetermination);
- clarify required documentation for presumptive eligibility; and
- provide that the Department will no longer recover overpayments that are made as a result of a Department error or omission.

Notes/Hearing: A public hearing was held on November 4, 2015. *\*\*There are ambiguities in the proposed amendments concerning overpayment recovery. I contacted the agency rule reviewer and have been reassured that the ambiguity will be resolved to reflect the Department's intent to not recover overpayments that are made due to Department error or omission.*

*Adoption Notice Notes:* The Department received one comment pertaining to the Montana Child Care Manual, which is incorporated by reference, and revised portions of the Manual in response to the comment, including:

- providing a website link to current reimbursement rates;
- consistently using the term "Early Childhood Services Bureau Special Needs Coordinator";
- clarifying who has authority to determine whether good cause exists for failing to cooperate with the Child Support Enforcement Division; and
- revising or removing language that referred to outdated practices.

The Department also resolved the ambiguities noted above.