



Children, Families, Health, and Human Services Interim Committee

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64th Montana Legislature

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September 4, 2015

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

From: Alexis Sandru, Staff Attorney

Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 11 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 (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.

MAR Notice Number: 37-704

Subject: Update of rules for youth care facilities

Summary: The Department proposed to: (1) adopt a new rule concerning fire safety regulations; (2) amend the definition of child/youth (lowering age in one instance and including parenting or pregnant youth under 21); (3) amend requirements for staff to include requirements that direct-care staff have a valid driver's license and obey Montana driving laws; and (4) amend physical environment requirements to include requirements that a youth care facility have hot and cold water and follow certain housekeeping requirements.

Notes/Hearing: Public hearing was held on February 4, 2015.

** Rule review found erroneous cites in the authorizing and implementing cites -- agency rule reviewer notified of errors.

Adoption Notice Notes: The Department received multiple comments and revised three of the adopted rules to address comments received, including correcting erroneous citations that were brought to the Department's attention in rule review.

MAR Notice Number: 37-705

Subject: Revision of fee schedules for Medicaid provider rates

Summary: The Department proposed to amend Medicaid provider fee schedules.

Notes/Hearing: Public hearing was held on June 3, 2015.

Adoption Notice Notes: The Department received three comments supporting the proposed amendments and amended the rules as proposed. The amendments are effective July 1, 2015.

MAR Notice Number: 37-706

Subject: Amendment of rules pertaining to federally qualified health centers and rural health clinics

Summary: The Department proposed to replace the phrase "increase or decrease" with "change" to clarify that a change in the scope of services is not necessarily a decrease or increase and to align the terminology with CMS definitions.

Notes/Hearing: Public hearing was held on May 20, 2015.

Adoption Notice Notes: The Department amended the rules as proposed. No comments were received. The amendments are effective July 1, 2015.

MAR Notice Number: 37-707

Subject: Nursing facility reimbursement

Summary: The Department proposed to amend rules concerning implementation of the Medicaid nursing facility reimbursement by updating references to the fiscal year to the current fiscal year of 2016 and by updating contact information for the department's fiscal intermediary for out-of-state facilities.

Notes/Hearing: Public hearing was held on June 3, 2015.

Adoption Notice Notes: The Department received no comments and amended the rules as proposed. The amendments are effective July 1, 2015.

MAR Notice Number: 37-708

Subject: Update to Healthy Montana Kids evidence of coverage document

Summary: The Department proposed to incorporate by reference and amend the Healthy Montana Kids (HMK) evidence of coverage document, which describes the health care benefits available to an HMK group member. The proposed changes concern the following: (1) authorization of telemedicine; (2) coverage of organ and tissue transplants and clarification of coverage of living donor; (3) per diem and transport for adult companion of child; (4) extension of limit on therapeutic family care; (5) leave limit for holding bed open at therapeutic group home; (6) services not payable under the HMK plan; (7) discontinuation of naturopathic physician services; (8) expanded coverage of over-the-counter nasal spray; and (9) addition of benzoyl peroxide to allowed over-the-counter drug list.

Notes/Hearing: Public hearing was held on May 27, 2015.

Adoption Notice Notes: The Department amended the rule as proposed. The Department received one comment concerning telemedicine. The amendment is effective July 1, 2015.

MAR Notice Number: 37-709

Subject: Amendment of rules pertaining to Medicaid transportation, personal per diem, and ambulance services

Summary: The Department proposed amendments to: (1) clarify the transportation and per diem requirements; (2) require ambulance service providers to submit an ambulance trip report and associated professional claim when seeking authorization for an emergency transport service and provide for the Department's designated review organization to review these documents when reviewing and approving claims; and (3) amend rules concerning qualified rate adjustment,

payment eligibility, and computation for ambulance services to conform to federal requirements.
Notes/Hearing: Public hearing was held on May 20, 2015.

Adoption Notice Notes: The Department received one comment from its own staff regarding erroneous language and corrected the language. The other rules were amended as proposed. The amendments are effective July 1, 2015.

MAR Notice Number: 37-710

Subject: Increase of reimbursement rates/clarification of language in developmental disabilities manual

Summary: The Department proposed to adopt and incorporate by reference the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services Waiver Programs and 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 Years of Age or Older or Who Reside in a Children's Community Home, both of which are dated July 1, 2015, and are revised, including revisions to reimbursement rates due to additional legislative appropriations.

Notes/Hearing: Public hearing was held on June 4, 2015.

Adoption Notice Notes: The Department received no comments and amended the rules as proposed. The amendments are effective July 1, 2015.

MAR Notice Number: 37-711

Subject: Laboratory fees for analysis and newborn screening for Severe Combined Immunodeficiency Disease (SCID)

Summary: The Department proposed to add SCID to the required conditions that are screened or tested for in the newborn screening panel. The Department also proposed to amend laboratory fees to cover the additional cost of performing the SCID screening test, resulting in an increase of \$6 to the laboratory fee for screening each baby.

Notes/Hearing: Public hearing was held on June 3, 2015.

Adoption Notice Notes: The Department received one comment supporting the rulemaking and amended the rules as proposed.

MAR Notice Number: 37-712

Subject: Update of annual poverty guidelines for Montana Telecommunications Access Program (MTAP)

Summary: The Department is proposing to revise the maximum level of allowable income under MTAP by substituting the 2015 United States Department of Health and Human Services poverty guidelines for households for the 2014 guidelines that are currently in place.

Notes/Hearing: No public hearing was held.

MAR Notice Number: 37-713

Subject: Non-Medicaid respite care services for youth with serious emotional disturbance

Summary: The Department proposed to incorporate non-Medicaid respite care services, which

are currently located in administrative rule, into the Non-Medicaid Services Provider Manual. The Department also proposed to amend the manual to:

(1) specify how and when the Room and Board Account and Systems of Care Account may be used for youth in state or tribal custody;

(2) provide income eligibility guidelines, including family income guidelines, joint income calculations, Social Security income, and Social Security disability income, for the Supplemental Services Program, Room and Board Account, and System of Care Account;

(3) further define the permissible use for non-Medicaid funding sources.

Notes/Hearing: Public hearing was held on July 15, 2015.

Adoption Notice Notes: The Department repealed the rules as proposed and, in response to public comment received, changed the effective date of the rule amendment from September 1, 2015, to October 1, 2015, to concur with the proposed rule amendments in MAR 37-718 and 37-719. The Department also corrected erroneous implementing citations.

MAR Notice Number: 37-714

Subject: Update of vital records to reflect current practices

Summary: The Department is proposing the following amendments to rules pertaining to vital records:

(1) replace references to *altered* documents with references to *amended* documents in order to more accurately describe the vital record correction process and to be consistent with statutory language;

(2) remove the word *autopsy* from pending death and fetal death certificates to include other circumstances that delay the filing of a certificate with the actual cause of death, allowing more certifications of death to be filed within filing deadlines; and

(3) make minor changes in style/grammar.

Notes/Hearing: No public hearing was held. **Erroneous implementing citation found in rule review -- agency rule reviewer contacted to correct citation.

MAR Notice Number: 37-715

Subject: Provider participation, program requirements, and reimbursement procedures for psychiatric residential treatment facility services (PRTF)

Summary: The Department is proposing the following:

- Adopt a new rule concerning reimbursement requirements for out-of-state PRTF providers;
- Amend existing rules for housekeeping/improved rule writing, refer to the most current federal guidelines that govern PRTF services under Medicaid, incorporate certain regulations, program policies, and procedures into the Children's Mental Health Bureau Medicaid Services Manual; and
- Repeal ARM 37.87.1210 (service requirements for out-of-state PRTFs) and 37.87.1214 (substance abuse disorder assessment and treatment).

Notes/Hearing: A public hearing was held on August 19, 2015. **This proposal notice triggers the requirements of SB 336 (2015), which requires the Department to include a determination of whether the rationale behind a rule involving the delivery of Medicaid services can be measured

using performance-based measures and, if so, the period over which the outcomes will be measured. The proposal notice did not include this determination, so I contacted the Department regarding this omission. The Department will be publishing an amended proposal notice to correct this omission.

Amended Proposal Notice Notes: The Department is amending the proposal notice to comply with the requirements of SB 336 (now codified as 53-6-196). The Department has determined that the principal reasons and rationale for the proposed rule cannot be assessed by performance-based measurements. The public comment period has been extended to September 4, 2015.

MAR Notice Number: 37-716

Subject: Amendment of immunization rules related to schools

Summary: The Department is proposing to amend school immunization rules for school-age children (preschool through Grade 12) in order to implement HB 158 (2015), which revised school immunization laws, adding varicella as a required immunization and revising requirements for the pertussis vaccine.

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

MAR Notice Number: 37-717

Subject: Adoption of new rules pertaining to production and sale of cottage food products

Summary: As a result of the passage of HB 478 (2015) (An act implementing safety standards and oversight for cottage food operations and various retail food establishments), the Department is proposing to adopt new rules to regulate the cottage food industry, including rules providing:

- which cottage food products are allowed;
- labeling requirements;
- requirements for cottage food operator health, personal cleanliness, and hygienic practices;
- requirements for how cottage food products are manufactured;
- registration requirements; and
- enforcement, inspection, and sampling requirements.

Notes/Hearing: A public hearing was held on August 20, 2015.

Amended Proposal Notice Notes: The Department is amending the proposal notice to include licensing fees for retail food establishments. HB 478 removed statutory license fees and provided the Department with authority to provide for the license fees in rule. The proposed fees are the same as what is currently provided in statute (\$85 for operations with two or fewer employees and \$115 for operations with more than two employees). The public comment period has been extended to September 4, 2015.

MAR Notice Number: 37-718

Subject: Update of adult and children's mental health fee schedules

Summary: The Department is proposing the following:

- Medicaid youth mental health fee schedule -- amend billing code for extraordinary needs aide service from per diem to 15-minute unit to comply with federal regulation;
- Medicaid provider fee schedule -- clarify that psychological testing policy adjuster only

- applies to psychologists; and
- Severe disabling mental illness home and community-based services waiver is discontinuing the supported living bundled service.

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

MAR Notice Number: 37-719

Subject: Revision of authorization requirements for Medicaid mental health services for youth

Summary: The Department is proposing to amend the following ARMs pertaining to Medicaid mental health services for youth:

- 37.87.102 -- housekeeping amendment involving definitions
- 37.87.901 -- correcting erroneous citation to ARM
- 37.87.903 -- amending the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated October 1, 2015. The proposed amendments pertain to provider participation, utilization review, program requirements, and procedures the Department will use to pay Medicaid mental health services for youth and are the result of feedback received from providers and the Department's own review of its ARMs and its continued effort to incorporate regulations, policies, and procedures into the Manual.
- 37.87.1303 & 37.87.1313 -- removing obsolete references/housekeeping/updating language to take into account proposed amendments to the Manual/updating references to waiver manuals.

The Department is also proposing to repeal 37.87.723 (Mental health center services for youth with serious emotional disturbance -- provider requirements) on the basis that these requirements are already provided in licensure rules and are redundant.

Notes/Hearing: A public hearing was held on August 19, 2015. **Erroneous implementing statutes found in rule review -- agency rule reviewer contacted to correct citations. Also, SB 336 requirements omitted (See 37-715 notes above for explanation).

Amended Proposal Notice Notes: The Department is amending the proposal notice to comply with the requirements of SB 336 (now codified as 53-6-196). The Department has determined that the principal reasons and rationale for the proposed rule cannot be assessed by performance-based measurements. The Department has also amended the proposal notice to correct erroneous cites to implementing statutes. The public comment period has been extended to September 4, 2015.

MAR Notice Number: 37-720

Subject: Revision of exceptions for Passport to Health Program referrals

Summary: The Department is proposing to amend the Passport to Health Program, a primary care case management program for Medicaid members, to allow members to receive inpatient professional services without having to receive referrals from their primary providers.

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

MAR Notice Number: 37-721

Subject: Update of federal poverty guidelines for Children's Special Health Services

Summary: The Department is proposing to update the federal poverty guidelines for Children's

Special Health Services from 2014 guidelines to 2015 guidelines (250% to 261%).

Notes/Hearing: A public hearing was not held.

MAR Notice Number: 37-723

Subject: Short-term voluntary inpatient mental health treatment

Summary: The Department is proposing to adopt a new rule that would implement HB 35 (2015 -- by request of the 2013-2014 CFHHS Interim Committee), which appropriated \$1 million from the general fund for the biennium to be used to pay for short-term inpatient treatment (up to 14 days) and required the Department to adopt rules to pay for this treatment. The proposed new rule provides:

- eligible providers are inpatient behavioral health units in hospital settings and mental health centers with inpatient crisis stabilization services;
- eligible patients are those persons who have voluntarily agreed to short-term inpatient treatment (and who have been recommended by a professional person for the treatment) in lieu of a 3-month commitment to the Montana State Hospital; and
- establishes rates of \$875/day for an inpatient behavioral health unit and \$575/day for an inpatient crisis stabilization program.

Notes/Hearing: A public hearing is scheduled for September 16, 2015, at 10 a.m. in Room 207 of the DPHHS building.

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