

AGENCY OVERSIGHT: RULES SUBJECT TO OBJECTION

Background

When state revenues for fiscal year 2017 fell below target levels set in Senate Bill 261, various spending reductions were triggered. They included a 0.5% across-the-board decrease for most state agencies, a \$3.5 million reduction for the Health Resources Division of the Department of Public Health and Human Services (DPHHS), and reductions of nearly \$1 million each for targeted case management (TCM) services for adults and children. Information provided at the time the triggered reductions were added to SB 261 showed that the \$3.5 million decrease was to reduce Medicaid provider rates by 1%.

This briefing paper summarizes action taken on administrative rules that were proposed and then adopted to reduce provider rates as part of the triggered spending reductions.

Proposed Rules: MAR Notices 37-788, 37-801, 37-802, and 37-805

Anticipating that state revenues would not hit the SB 261 target for FY 2017, DPHHS proposed four rules in July 2017 to cut most Medicaid provider rates and the rates for some non-Medicaid services by 3.47% and to reduce TCM rates by 58% for children and 55% for adults. DPHHS said those levels of reduction were needed to address the SB 261 cuts. The rate reductions, to be effective Oct. 1, were proposed in the following Montana Administrative Register notices:

- 37-788, setting rates for most Medicaid providers and for providers of some non-Medicaid services;;
- 37-801, setting rates for behavioral health targeted case management services;
- 37-802, setting rates for community services to developmentally disabled individuals; and
- 37-805, setting nursing home rates.

Interim Committee Action

As part of its statutory duties, the Children, Families, Health, and Human Services Interim Committee reviews rules proposed by DPHHS and can take various actions related to those proposals.

Informal Objection

On July 25, 2017, a majority of the committee members provided written notice objecting to the rules. That informal objection had the potential to prevent the department from adopting the rules for up to six months if it was renewed at each committee meeting.

In September, the committee heard testimony from dozens of people who discussed the effects the rate reduction would have and questioned the need to reduce rates to that degree. At that meeting, the committee decided to continue the informal objection.

Formal Objection

The committee met by conference call on Nov. 8, 2017, to discuss whether to take further action on the rules. Members voted 7-1 to formally object to all four rules. The committee's letter of objection stated that members determined the rules failed to meet the reasonableness component of the Montana Administrative Procedure Act because they did not detail how DPHHS arrived at the 3.47% rate reduction. The letter noted that the 0.5% general fund reduction for agency budgets did not specifically apply to provider rates and said DPHHS had failed to demonstrate its reasons "for further reducing provider rates as opposed to making reductions elsewhere."

The committee also said the public comments it received showed that the rate cuts would disproportionately affect vulnerable people and could reduce the availability of services allowing people to stay in their homes and communities rather than seeking more costly inpatient or residential services – contrary to Medicaid funding principles outlined in 53-6-101, MCA.

Under 2-4-306, MCA, the objection prevented DPHHS from putting the rules into effect until the day after the end of the 2019 legislative session unless:

- the committee withdrew its objection before the rules were adopted; or
- a majority of the committee members notified the presiding officer that the agency adopted the rules with changes that made the rules comply with the concerns raised in the committee's objection.

Current Status of Rules

DPHHS adopted the rules on Nov. 27 after revising the general provider rate cut from 3.47% to 2.99% and changing the effective date from Oct. 1, 2017, to Jan. 1, 2018. In the Notice of Amendment filed for each rule, DPHHS gave the following explanation of how it calculated the 2.99% decrease.

Factor	Amount
Section 12 of SB 261: Reduces Medicaid General Fund Appropriation by 0.5%	\$1,423,827
Section 21 of SB 261: Reduces Health Resources Division Appropriation	\$3,500,000
Total General Fund Spending Reduction	\$4,923,827
Federal Funds Lost Due to General Fund Reductions	\$9,331,608
Total Cost of Spending Reduction Required for FY 2018	\$14,255,435
Projected Expenditures for Impacted Medicaid Provider Types	\$954,922,507
Required Rate Reduction to Achieve Spending Reduction in 12 Months	1.49%
Required Rate Reduction to Achieve Spending Reduction in 6 Months	2.99%

In its proposal notice on the TCM rules, the agency outlined the impact of the additional funding cut for TCM as follows:

SB 261 TCM Reduction	General Fund	Federal Fund Impact	Total
Adult Mental Health	\$892,136	\$1,690,771	\$2,582,907
Children's Mental Health	\$1,224,878	\$2,321,382	\$3,546,260
Substance Abuse	\$1,060	\$2,002	\$3,062
Total Reductions	\$2,118,074	\$4,014,155	\$6,132,229

As of Dec. 28, five committee members provided written notice to the presiding officer that they believed the changes made to the rules complied with committee's concerns. DPHHS was subsequently able to put the rules into effect Jan. 1.