



Children, Families, Health, and Human Services Interim Committee

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66th Montana Legislature

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January 2, 2020

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for January 2020 Meeting

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) for compliance with the Montana Administrative Procedure Act. At its June 2019 meeting, the Committee elected to receive bimonthly emails from staff that summarize DPHHS rulemaking activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the Committee's November 2019 meeting, covering Montana Administrative Register issues 21 through 24.

PROPOSAL NOTICES

MAR Notice Number: 37-899

Subject: Update effective dates for Medicaid fee schedules

Summary: The Department is proposing to:

- revise the effective dates for the following fee schedules to reflect the updated procedure codes adopted by CMS:
 - RBRVS;
 - hearing aid services;
 - dentist;
 - ambulance services;
 - optometric;
 - lab and imaging; and
 - licensed direct entry midwives;
- amend the effective date of the Region D Supplier Manual to January 1, 2020, and revise the effective dates of local and national coverage determinations to January 1, 2020; and
- revise the effective date of the durable medical equipment fee schedule to January 1, 2020, to adopt the calendar year 2020 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies fee schedule and criteria.

(See the proposal notice for a description of funds and the number of providers impacted.) The Department intends for the rulemaking to go into effect January 1, 2020.

Notes/Hearing: A public hearing was held on December 2, 2019. The public comment deadline was extended to 5 p.m. on January 3, 2020.

MAR Notice Number: 37-900

Subject: Hospice rate increase

Summary: The Department is proposing to amend hospice rules to incorporate federal requirements that an addendum must be added to all hospice election and revocation statements that includes information to increase coverage transparency. The Department also proposes to implement an approximate, aggregate hospice reimbursement rate increase of 2.6%, effective October 1, 2019.

Notes/Hearing: A public hearing was held on December 27, 2019. Public comment is due by 5 p.m. on January 3, 2020.

MAR Notice Number: 37-903

Subject: Big Sky Rx premium change

Summary: The Department is proposing to decrease the maximum amount that Big Sky Rx will contribute to pay an enrollee's monthly premium from \$35.80 to \$35.40. The Department notes that the amendment is being proposed to match the federal Low Income Subsidy monthly benefit benchmark. The Department anticipates a decrease in annual state special fund spending of \$13,891.20 and intends for the changes to go into effect upon publication of the adoption notice.

Notes/Hearing: A public hearing was held on December 30, 2019. Public comment is due by 5 p.m. on January 3, 2020.

MAR Notice Number: 37-905

Subject: Medicaid member copayments

Summary: The Department is proposing to eliminate copayments for Medicaid and Medicaid Expansion members, effective January 1, 2020. The Department anticipates the following fiscal impact:

SFY 2020: \$167,051 (state general fund); \$1,164,598 (federal funds)

SFY 2021 \$341,547 (state general fund); \$2,381,050 (federal funds)

Notes/Hearing: A public hearing was held on December 12, 2019. **Emailed rule reviewer re: (1) whether the statement of reasonable necessity should cite 53-6-1306 for the prohibition on copayments for the expansion population; and (2) whether the definition of cost share in 37.84.102 should have been amended to reflect the elimination of copayments. Public comment was due on December 20, 2019.

MAR Notice Number: 37-906

Subject: Update of Healthcare Effectiveness Data and Information Set (HEDIS)

Summary: Under the Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA), the Department evaluates quality assurance activities of health carriers providing managed care plans in Montana via the health carriers reporting activities using HEDIS measures, which are updated annually. The Department is proposing to update the HEDIS measures from 2019 to 2020 measures. The Department intends to apply the rulemaking retroactively to January 1, 2020.

Notes/Hearing: A public hearing is not scheduled. Public comment is due by 5 p.m. on January 24, 2020.

ADOPTION NOTICES

MAR Notice Number: 37-847

Subject: Adoption, amendment, and repeal of rules pertaining to wholesale foods and food standards

Summary: The Department proposed to repeal existing rules pertaining to wholesale food establishments and to adopt new rules that:

1. adopt and incorporate by reference the Food and Consumer Safety Circular 2-2019 for wholesale food establishments;
2. describe the process for licensure as a wholesale food establishment;
3. provide for an inspection at least once every 12 months;
4. set minimum performance requirements for local health authorities to qualify for reimbursement from the local board inspection fund account under 50-57-305, MCA; and
5. provide requirements for issuance of a Certificate of Free Sale by the Department.

The Department also proposed to update 2001 state food standards to the most recent federal standards.

The Department anticipated no fiscal impact associated with the proposed rulemaking and intended for the rulemaking to be effective January 1, 2020.

Notes/Hearing: A public hearing was held on June 13, 2019. Public comment was due on June 21, 2019.

Adoption Notice Notes: The Department received 83+ comments, mainly concerning the Food and Consumer Safety Circular, to which the Department made numerous revisions in response to the comments received. The rulemaking is effective January 1, 2020.

MAR Notice Number: 37-890

Subject: Private alternative adolescent residential programs or outdoor programs (PAARP)

Summary: The Department proposed to adopt 61 new rules pertaining to licensure procedures and requirements for PAARPs. The proposed new rules:

- establish licensing fees, which are the same as the fees established under the Board of Private Alternative Adolescent Residential and Outdoor Programs;
- establish requirements for written policies and procedures, admissions, and discharges;
- require the creation of individual case plans for each program participant, require the documentation of services provided, and provide for the confidentiality of information provided to the program;
- establish requirements for a safe and healthy living environment;
- establish standards of employment, including requiring that staff be at least 21 years of age and have a high school diploma or GED;
- establish staffing ratios and training requirements;
- describe appropriate use of time-out procedures and provide guidance on the application of crisis intervention and physical restraints;

- require physicals for participants in outdoor programs and additional training and safeguards specific to providing a safe program in the outdoors.

The Department did not anticipate a fiscal impact and intended for the rulemaking to go into effect October 1, 2019.

Notes/Hearing: A public hearing was held on September 12, 2019. Public comment was due on September 20, 2019. **A fiscal impact estimate was not included in the proposal. Emailed agency rule reviewer. The Department published an amended proposal notice that includes a fiscal impact estimate. The Department anticipates the expected cumulative total of licensing fees paid by the 17 affected facilities will be \$92,555/year.

Adoption Notice Notes: The Department received numerous comments and, in response to the comments received, adopted the rules with numerous revisions, including but not limited to:

- revising the definition of the term “adolescent” to allow participants who are up to age 20 if they are enrolled in an accredited secondary school;
- allowing programs to limit parental contact no longer than 7 days after admission;
- requiring that programs have discharge plans available to parents at the time of discharge;
- providing that participants may be discharged to individuals approved by the parents;
- allowing programs to hire staff pending the results of the fingerprint checks if a name-based check and all other background checks have been completed;
- revising the number of toilet and bathing facilities to 1 per 8 program participants;
- allowing for laundry areas rather than a room;
- expanding the circumstances in which records may be released;
- requiring staff to be at least 20 years old;
- allowing an awake night staffing ratio of 1 staff to 16 program participants;
- allowing programs to determine in policy when it is appropriate to contact law enforcement regarding contraband; and
- allowing firearms on property with 1 on 1 supervision;

The rulemaking went into effect on November 8, 2019.

MAR Notice Number: 37-893

Subject: Inpatient and outpatient hospital reimbursement adjustors

Summary: The Department proposed to:

6. in accordance with HB 658 (2019), adopt a new rule establishing an outpatient hospital reimbursement adjustor (HRA) payment to a PPS hospital or critical access hospital in Montana;
7. provide additional definitions to distinguish the inpatient hospital utilization fee from the outpatient hospital utilization fee;
8. revise the exclusion criteria for HRA supplemental payments;
9. for continuity of care payment calculations, use the claims data for the most recent calendar year, instead of the calendar year ending 12 months prior to the continuity of care payment calculation; and
10. clarify the difference between Part 1 and Part 2 HRA payments generated from the inpatient hospital utilization fee.

Notes/Hearing: A public hearing was held on December 3, 2019. Public comment was due on December 6, 2019.

Adoption Notices Notes: The Department received no public comment and adopted and amended the rules as proposed.

MAR Notice Number: 37-896

Subject: Vital records amendments

Summary: The Department proposed to clarify when a court order is required to amend a vital record by specifying that a court order is not required in two instances: (1) when Department supervisory staff are amending a vital record to protect the integrity, accuracy, and validity of the record; and (2) when a medical certification for cause of death is being amended and there is no dispute as to the cause of death. The Department also proposed to remove a reference to depositing money in a state special revenue account that no longer exists and proposed to increase the fees charged for certain services to cover the actual cost of providing the services. The Department noted that fees have not been revised or increased since 2002.

The Department anticipated that the proposed fee increase will result in an additional annual revenue of \$13,490 for the Office of Vital Statistics. The Department intended for the rulemaking to go into effect on January 1, 2020.

Notes/Hearing: A public hearing was held on October 11, 2019. Public comment was due on October 18, 2019.

Adoption Notice Notes: The Department received one comment asking whether a coroner, deputy coroner, or medical examiner can amend a vital record without a court order. The Department responded that this is possible if the cause of death is not disputed. The rules were amended as proposed and are effective January 1, 2020.

MAR Notice Number: 37-897

Subject: Low Income Energy Assistance Program (LIEAP)

Summary: The Department proposed the following amendments to LIEAP:

11. replace references to Intergovernmental Human Services Bureau with references to the Department's Human and Community Services Division to reflect reorganization within the Department;
12. update the LIEAP Benefit Award Matrix and Table of Multipliers for the 2019-2020 heating season, which is based on estimates of the available funds, number of eligible households, and fuel cost projections for 2019-2020;
13. revise definitions for clarity and to comply with current practices;
14. revise income standards to adopt the U.S. Department of Health and Human Services' poverty guidelines for 2019-2020 and revise household sizes in calculating eligibility using the estimated state median annual gross income; and
15. update the LIEAP Table of Nonbusiness Resource Limits.

The Department noted that LIEAP is 100 percent federally funded.

Notes/Hearing: A public hearing was held on December 3, 2019. Public comment was due on December 6, 2019.

Adoption Notice Notes: The Department received no public comment and amended the rules as proposed. The Department intends to apply the rulemaking retroactively to October 1, 2019.

MAR Notice Number: 37-898

Subject: Assisted living and nursing facility reimbursement

Summary: The Department proposed to:

16. increase the statewide price (average daily rate) for nursing facilities from \$204.30 to \$208.06, effective October 1, 2019; and
17. increase the daily rate for assisted living facilities from \$77.05 to \$78.80, effective October 1, 2019.

For state fiscal year 2020, the Department anticipated that the proposed increases will result in a total funds (state, federal, and patient contribution) impact of \$3.7 million for nursing facilities and a state and federal funds impact of \$356,010 for assisted living facilities.

Notes/Hearing: A public hearing was held on October 24, 2019. Public comment was due on November 1, 2019.

Amendment Notes: The Department amended the statement of reasonable necessity to correct an error in the website address for the proposed reimbursement rates for nursing facilities and to include the website address for the Department's proposed Medicaid daily rate for assisted living facilities.

Adoption Notes: The Department received 15+ comments, some of which supported the rate increase and others which questioned the adequacy of the rates and the process by which the rates were calculated. Of note, in response to numerous comments concerning assisted living facilities, the Department stated that it will be creating a work group of assisted living providers and other interested parties to examine the current rate methodology and discuss other potential options.

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