



Children, Families, Health, and Human Services Interim Committee

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66th Montana Legislature

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June 22, 2020

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for June 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 May 2020 meeting, covering Montana Administrative Register issues 9 through 11.

PROPOSAL NOTICES

MAR Notice Number: 37-916

Subject: Medicaid and non-Medicaid provider rates, fee schedules, and effective dates

Summary: The Department is proposing:

- provider rate increases for most Medicaid and non-Medicaid providers, effective July 1, 2020. This includes a legislatively appropriated provider rate increase for the Big Sky Waiver Program, which will increase provider rates by 1.83% for Big Sky Waiver services but excludes transportation miles and assisted living facility residential habilitation services.
- to adopt the most recent relative value unit component of the resource-based relative value scale model (RBRVS) and to adopt conversion factors for allied health services, mental health services, and anesthesia services that provide for an increase of 1.83%. In addition, the Department is proposing to increase the optometric rate of reimbursement and autism state plan services reimbursement by 1.83%.
- revise the physician conversion factor, including applying the reduction associated with HB 669 (2019);
- adopt fee schedules that are effective July 1, 2020, and that incorporate the changes in the rulemaking;
- adopt the January 1, 2020, federal register reference for the RBRVS and Outpatient Prospective Payment System reimbursement methodologies; and
- increase the Outpatient Cost-to-Charge ratio from 37.5% to 48%.

The Department anticipates a fiscal impact, which is described in detail, per provider type, in the proposal notice.

Notes/Hearing: A public hearing was held on June 4, 2020. Public comment was due on June 12, 2020.

MAR Notice Number: 37-917

Subject: Medicaid and non-Medicaid manual updates

Summary: The Department is proposing to incorporate updated versions of the Addictive and Mental Disorders Division:

- Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated July 1, 2020; and
- Non-Medicaid Services Provider Manual for Substance Use Disorder, dated July 1, 2020.

Changes to the Medicaid services manual include:

- expanding the Program for Assertive Community Treatment (PACT) to a three-tier model to support transitions between Montana State Hospital, crisis services, and community-based mental health services;
- creating a new stand-alone community maintenance service;
- removing intensive community-based rehabilitation because the service has been moved to the 1915(c) Home and Community-Based Services, Severe and Disabling Mental Illness waiver program as a habilitation service;
- replacing Adult Group Home with Behavioral Health Group Home;
- differentiating between 24-hour inpatient crisis stabilization services and 23-hour, 59-minute outpatient crisis stabilization services provided under the Crisis Stabilization Program; and
- update utilization review information due to the implementation of a new Department-wide utilization review contractor.

Changes to the non-Medicaid services manual include:

- general housekeeping amendments; and
- removing substance use disorder special projects because the program is now managed through contract with providers that offer the service. The Department notes that the amendment will eliminate redundancy between the contract process and administrative rule.

The Department anticipates a fiscal impact of \$3,534,500 (SFY 21) and \$5,575,600 (SFY 22) related to the PACT redesign and amendment of Adult Group Home to Behavioral Health Group Home.

Notes/Hearing: A public hearing was held on June 5, 2020. Public comment was due on June 12, 2020.

MAR Notice Number: 37-918

Subject: Home and community-based services for adults with severe and disabling mental illness

Summary: The Department is proposing to adopt 15 new rules and amend and repeal existing rules as part of its request submitted to CMS to renew the Montana Medicaid Severe and Disabling Mental Illness (SDMI) 1915(c) Home and Community-Based Waiver and the

concurrent 1915(b)(4) SDMI Waiver. The Department is proposing the following waiver changes:

- update the SDMI definition to reflect current terminology;
- increase the unduplicated members served by the waiver from 357/year to 600 members in year one, 650 in year two, and 750 in years 3 through 5;
- update the SDMI determination form to the SDMI, Home and Community Services Waiver, Evaluation and Level of Impairment Form;
- revise how a member is placed on the waitlist;
- establish a proposed reserve capacity for individuals discharging from the Montana State Hospital and the Montana Mental Health Nursing Care Center and individuals accessing Money Follows the Person;
- remove pre-vocational services and expand residential habilitation services;
- add additional oversight for incident management, including updating the definition of serious occurrences; and
- provide additional details regarding waiver administration, oversight, and operations.

The Department anticipates a fiscal impact of \$84,500 (SFY 21) and \$101,800 (SFY 22).

Notes/Hearing: A public hearing was held on June 5, 2020. Public comment was due on June 12, 2020.

MAR Notice Number: 37-919

Subject: Nursing facility reimbursement

Summary: The Department is proposing to:

- update the nursing facility reimbursement methodology to use a flat rate cost-based system and a quality component payment based on the 5-star rating system by CMS. The Department notes that the change is necessary because the current methodology utilizes parts of the CMS Minimum Data Set requirements that will no longer be collected because of changes to CMS regulations. The flat rate for FY 21 is proposed to be \$208.06, which is the same rate as the former statewide average price.
- provide that newly constructed facilities will be reimbursed in the manner described above;
- include add on payments for trach dependent residents, behavior related needs residents, wound care residents, bariatric care residents, and residents with traumatic brain injury; and
- reimburse for telemedicine/telehealth originating site fees if the services meet certain requirements.

The Department anticipates a fiscal impact of \$6 million in combined state and federal funds and intends to apply the rulemaking retroactively to July 1, 2020.

Notes/Hearing: A public hearing was held on June 18, 2020. Public comment is due by 5 p.m. on June 26, 2020.

ADOPTION NOTICES

MAR Notice Number: 37-902

Subject: Pools, spas, and other water features

Summary: The Department proposed to adopt and incorporate newer editions of the International Swimming Pool and Spa Code (ISPC) and the Department's circular regarding standards for swimming pools. The Department noted that the ISPC update is necessary to conform with updated standards for construction adopted by the Department of Labor and that the proposed circular updates are necessary to clarify requirements related to water testing, signage, and supervision in response to stakeholder feedback. The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on April 16, 2020. Public comment was due on April 24, 2020.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The rulemaking is effective May 16, 2020.

MAR Notice Number: 37-907

Subject: Montana Medical Marijuana Program

Summary: The Department proposed the following revisions to the Montana Medical Marijuana Program (Program):

- adopt a new rule describing prohibited advertising activities;
- revise proof of Montana residency requirements to require applicants to have a valid Montana driver's license, identification card, or tribal identification card (ARM currently allows an applicant to establish residency using a lease agreement or utility bill);
- revise provider license fees to include: (1) the fees provided in 50-46-347, MCA, which were enacted by the 2019 Legislature; (2) a marijuana-infused product provider fee of \$500 per registered premises; (3) a chemical manufacturing endorsement fee of \$100; and (4) a custodial parent/guardian fee of \$100. The Department is also proposing to require marijuana employee applicants to submit a \$10 fee with initial applications and renewal applications.
- revise provider/marijuana-infused products provider requirements to include: (1) requiring that limited access areas at registered premises be clearly identified with conspicuous signage; (2) requiring that employees wear identification badges in a clearly visible manner; (3) converting existing businesses into a canopy license and canopy tier; (4) requiring registered premises to meet minimum sanitary requirements; (5) requiring that standard operating procedures for producing marijuana and documentation demonstrating compliance with local jurisdiction requirements be maintained on the registered premises and made available for Department inspection at all times; (6) requiring the use of a licensed weighing device when marijuana is weighed; (7) prohibiting selling or transferring marijuana through a drive-up window; (8) prohibiting: (a) the sale of marijuana in excess of the daily or monthly cardholder limit; (b) the cultivation of hemp or engaging in hemp manufacturing at a registered premises; or (c) selling hemp flowers; and (9) allowing licensees to sell only hemp CBD products sourced from hemp produced and sold through the Montana Department of Agriculture Hemp

Program;

- delete language allowing the issuance of volunteer badges (the Department notes that this rule change does not prohibit unpaid employees);
- adopt allowable amounts for registered cardholders electing not to obtain marijuana/products from the system of licensed providers to include: (1) 16 oz. of usable marijuana at their registered premises and 1 usable oz. at any other location; (2) a process for cardholders to use to increase their allowable amounts; and (3) establishing a conversion chart to use when determining the allowable amount of non-flower marijuana; and
- revise inventory tracking requirements to require licensees to: (1) verify cardholders' eligibility and daily/monthly purchase limits; (2) record sales, samples, and testing results in the seed-to-sale tracking system; and (3) generate transport manifests using the seed-to-sale tracking system and document marijuana items received in the system.

The Department anticipated that the chemical manufacturing endorsement fee will generate \$19,700 in revenue and the marijuana-infused product provider fee will generate \$98,500 in revenue. The Department intended to apply the rulemaking retroactively to January 1, 2020.

Notes/Hearing: A public hearing was held on February 20, 2020. Public comment was due on February 28, 2020.

Adoption Notice Notes: The Department responded to 28 comments, which expressed concern with the advertising ban, residency requirements, canopy size, monthly/daily purchase limits, and restriction on CBD product sales. The Department mostly adopted and amended the rules as proposed, with the following changes:

- inserted exception to advertising ban allowing licensees to use the phrase "DPHHS Montana Medical Marijuana Program Licensed Provider" in signage, on website homepages, and in promotional materials;
- restored the application fee for testing laboratories, which was inadvertently deleted in the proposal notice;
- clarified that low-THC, high-CBD marijuana is considered marijuana under a provider's license;
- allowed licensees to sell CBD products sourced from hemp produced and sold by a producer who is licensed by a state or tribe with a USDA-approved hemp production plan (proposal notice limited this to Montana Department of Agriculture Hemp Program producers); and
- clarified language pertaining to conversion of non-flower marijuana equivalencies.

The rulemaking applies retroactively to January 1, 2020.

MAR Notice Number: 37-912

Subject: Child Support Enforcement Division program name change

Summary: The Department proposed to change the name of the Child Support Enforcement Division to Child Support Services Division to better reflect the various services provided by the Division, including paternity establishment, support order establishment, and review and adjustment of support and medical orders. The Department noted that when the agency began in

1976, the only service it provided was enforcement of support obligations. The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on April 16, 2020. Public comment was due on May 7, 2020.

Adoption Notice Notes: The Department received no public comment and amended the rules as proposed. The rulemaking applies retroactively to March 1, 2020.

MAR Notice Number: 37-914

Subject: Documentation to establish Medicaid residency

Summary: House Bill 658 (2019) required the Department to establish by rule the documentation required to verify that a Medicaid applicant is a Montana resident. The Department proposed to verify an applicant's Montana residency using "electronic data sources permitted by federal and state law, driver's license, state identification card, mortgage or rental agreement, post office records, utility bill, and wage stub". The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on April 16, 2020. Public comment was due on April 24, 2020.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The rulemaking applies retroactively to April 1, 2020.

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