



Children, Families, Health, and Human Services Interim Committee

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66th Montana Legislature

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March 5, 2020

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

FROM: Alexis Sandru, Staff Attorney

RE: Administrative Rule Report for March 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 January 2020 meeting, covering Montana Administrative Register issues 1 through 4.

PROPOSAL NOTICES

MAR Notice Number: 37-904

Subject: Best Beginnings Child Care Scholarship Program

Summary: The Department is proposing the following revisions to the Best Beginnings Child Care Scholarship Program, which offers child care assistance to low-income families with parents working/attending school, families referred by TANF, and children referred by CPS:

- update the Early Childhood Services Bureau Child Care Policy Manual to:
 - remove language about cases closing due to an unpaid copayment (a case will not close during a 12-month eligibility period);
 - provide that the Department will pay the monthly authorized amount when a child attends a child care provider for 85% of the authorized time, allowing for the payment of occasional absences; and
 - require that invoices include a child's actual time in and out of a child care facility;
- revise the definition of a half-time day to mean 5 hours or less;
- pay for an additional percentage of child care provided outside of traditional hours; and
- amend existing rules to align with the revisions to the manual described above and to align with federal regulations regarding when a case may be terminated.

The Department anticipates that child care providers who have children receiving child care assistance and attending full-time will see a benefit because the providers will receive the entire month's authorized payment. The Department intends for the rulemaking to go into effect July 1, 2020.

Notes/Hearing: A public hearing was held on February 6, 2020. Public comment was due on February 14, 2020. **Imp/auth statutes include citations to 53-4-601 and 53-4-612, which were repealed by the 2019 Legislature -- emailed agency rule reviewer.

MAR Notice Number: 37-907

Subject: Montana Medical Marijuana Program

Summary: The Department is proposing 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 anticipates 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 intends 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.

MAR Notice Number: 37-910

Subject: Targeted case management services for persons with developmental disabilities – rate increase & revision of billing practices

Summary: The Department is proposing the following amendments to targeted case management (TCM) services for individuals with developmental disabilities enrolled in the 1915(c) 0208 home and community-based comprehensive waiver or eligible individuals age 16 and over:

- revise the TCM delivery model to allow for regional delivery rather than statewide delivery;
- in accordance with HB 680 (2019), increase the monthly rate for TCM services to \$134.82/month/member to provide for an average caseload of no more than 35 clients per case manager; and
- only allow payment for TCM when at least 1 of 4 billable TCM services is provided in a month.

The Department anticipates a fiscal impact of \$1,427,348 (FY 2020) and \$1,419,648 (FY 2021). The Department intends to apply the rulemaking retroactively to March 1, 2020.

Notes/Hearing: A public hearing is scheduled on March 5, 2020, at 10 a.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on March 13, 2020.

MAR Notice Number: 37-911

Subject: Updates to targeted case management, outpatient therapy, and reference revisions

Summary: The Department is proposing the following amendments:

- revise the Medicaid behavioral health targeted case management (TCM) fee schedule for the Developmental Services Division and the Addictive and Mental Disorders Division to increase the TCM reimbursement rate to \$15.90/15-minute increment and provide for an enhanced rate of \$18.28 per unit for TCM services provided to a youth residing in a Montana county with a per capita population of fewer than 7 people per square mile;
- revise the Children's Health Bureau Medicaid Manual, including revising medical necessity criteria and definitions and eliminating the 365-day lifetime limit for home support services and the prior authorization requirement;

- allow Medicaid-eligible youth with serious emotional disturbance (SED) to receive medically necessary TCM services when transitioning to a community setting;
- revise the process for completing and updating case management plans for youth and the content required to be included in the plans;
- require targeted case managers to meet with a youth's family or caregivers to complete a family treatment team meeting preparation checklist and questionnaire;
- require 20 hours of initial and continued training for targeted case managers; and
- increase, from 10 to 24, the number of outpatient therapy visits per fiscal year for youth without an SED diagnosis.

The Department anticipates a fiscal impact of \$657,943 (FY 2020), \$4,873,606 (FY 2021), and \$7,266,258 (FY 2022). The Department intends to apply rulemaking regarding the proposed fee schedule, the changes to the manual involving home support services, diagnosis codes, and list of SED, and the increase to the outpatient therapy limit retroactively to March 1, 2020. The Department intends for the other rulemaking to go into effect September 1, 2020.

Notes/Hearing: A public hearing is scheduled on March 19, 2020, at 10 a.m. in the auditorium of the DPHHS building located at 111 North Sanders, Helena, Montana. Public comment is due by 5 p.m. on March 27, 2020.

ADOPTION NOTICES

MAR Notice Number: 37-873

Subject: Healthy learning environments in Montana public schools

Summary: The Department proposed to adopt four new rules and to amend existing rules concerning health and safety in schools. The Department noted that the rules have not been updated since 1986. The proposed new rules address indoor air quality, limit student exposure to the outdoors during periods of unsafe air quality, and ensure that chemicals used during science, art, and vocational programs are used safely. The Department proposed numerous amendments to existing rules, including but not limited to:

- revising preconstruction review requirements to address items such as chemical storage areas, emergency eyewash stations, playground safety, and school air intakes and radon mitigation;
- requiring annual inspections of schools and clarifying inspection procedures and recordkeeping requirements;
- addressing storage and administration of medications and reasonable accommodations for breastfeeding;
- reporting requirements for communicable diseases;
- requiring testing for lead in all human consumption fixtures;
- providing additional requirements related to drying laundry; and
- requiring the development and implementation of integrated pest management plans to prevent the spread of bedbugs, lice, rodents, and other pests.

The Department did not anticipate a significant fiscal impact, except for the lead testing, which the Department anticipated could have a significant fiscal impact. (For a detailed analysis of the fiscal impact, based on school size, see the rule notice.)

Notes/Hearing: A public hearing was held on July 11, 2019. Public comment was due on July 19, 2019. The public comment period was extended to September 16, 2019.

Adoption Notice Notes: The Department received over 150 comments, ranging from expressing concern with the October 1, 2019, implementation date originally proposed to concern about potential fiscal impacts on schools. In response, the Department staggered several implementation dates (see below), moved multiple structural requirements to preconstruction requirements (allowing current schools to be grandfathered in and avoid structural alterations), and indicated that the Department plans to provide training and technical assistance to assist schools in implementing the rules. The Department has adopted the rulemaking as proposed, with numerous changes, including but not limited to the following:

- extended requirements regarding the storage, administration, and disposal of prescription and nonprescription medications to September 1, 2021;
- extended water sampling requirements to require that initial samples must be taken by December 31, 2021 (originally proposed October 1, 2019), and required that schools must create and implement a flushing program by September 1, 2021;
- extended requirements regarding implementation of an approved Integrated Pest Management Program to September 1, 2021 (originally proposed September 1, 2020);
- inserted language allowing schools to apply for an annual exemption from change of use requirements for up to 1 year for modular or mobile buildings; and
- clarified rules regarding indoor and outdoor air quality, including requiring schools to keep records of indoor air quality inspections for no less than 3 years and requiring that schools have protocol in place to limit the infiltration of outside air into the school during poor air quality conditions (originally proposed language that schools “seal” buildings).

MAR Notice Number: 37-899

Subject: Update effective dates of Medicaid fee schedules

Summary: The Department proposed 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 intended for the rulemaking to go into effect January 1, 2020.

Notes/Hearing: A public hearing was held on December 2, 2019. Public comment was due on December 6, 2019. The public comment period was extended to January 3, 2020.

Adoption Notice Notes: The Department received several comments, mainly expressing concern with the amount of time allotted for commenting on the updated fee schedules. One commenter supported increased reimbursement rates but asserted that optometrists should be reimbursed a fee equal to the rate physicians are paid for performing the same services. The Department amended the rule as proposed. The Department intends to apply the rulemaking retroactively to January 1, 2020.

MAR Notice Number: 37-900

Subject: Hospice rate increase

Summary: The Department proposed 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 proposed 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 was due on January 3, 2020.

Adoption Notice Notes: The Department received no public comment and amended the rules as proposed. The Department intends to apply reimbursement rate increases retroactively to October 1, 2019; decreases in rates are effective January 17, 2020.

MAR Notice Number: 37-903

Subject: Big Sky Rx premium change

Summary: The Department proposed 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 noted that the amendment was being proposed to match the federal Low Income Subsidy monthly benefit benchmark. The Department anticipated a decrease in annual state special revenue fund spending of \$13,891.20 and intended 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 was due on January 3, 2020.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The amendment is effective January 17, 2020.

MAR Notice Number: 37-905

Subject: Medicaid member copayments

Summary: The Department proposed to eliminate copayments for Medicaid and Medicaid Expansion members, effective January 1, 2020. The Department anticipated 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.

Adoption Notice Notes: The Department received one comment in support of the rulemaking and amended the rule as proposed. The Department intends to apply the rulemaking retroactively to January 1, 2020.

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 proposed to update the HEDIS measures from 2019 to 2020 measures. The Department intended to apply the rulemaking retroactively to January 1, 2020.

Notes/Hearing: A public hearing was not scheduled. Public comment was due on January 24, 2020.

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

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