



Children, Families, Health, and Human Services Interim Committee

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66th Montana Legislature

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May 5, 2020

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for May 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 canceled March 2020 meeting, covering Montana Administrative Register issues 5 through 8.

PROPOSAL NOTICES

MAR Notice Number: 37-902

Subject: Pools, spas, and other water features

Summary: The Department is proposing to adopt and incorporate newer editions of the International Swimming Pool and Spa Code (ISPSC) and the Department's circular regarding standards for swimming pools. The Department notes that the ISPSC update is necessary to conform with updated standards for construction adopted by the Department of Labor and Industry 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 anticipates no fiscal impact.

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

MAR Notice Number: 37-912

Subject: Child Support Enforcement Division program name change

Summary: The Department is proposing 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 notes that when the agency began in 1976, the only service it provided was enforcement of support obligations. The Department anticipates no fiscal impact.

Notes/Hearing: A public hearing was held on April 16, 2020. Public comment is due on May 7, 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 is proposing 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 anticipates no fiscal impact.

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

ADOPTION NOTICES

MAR Notice Number: 37-904

Subject: Best Beginnings Child Care Scholarship Program

Summary: The Department proposed 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 anticipated 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 intended for the rulemaking to go into effect June 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, MCA, which were repealed by the 2019 Legislature -- emailed agency rule reviewer.

Adoption Notice Notes: The Department received 16+ comments, mainly concerning payment of the monthly authorized amount when a child attends care for 85% of the authorized time, and amended and repealed the rules as proposed. The rulemaking is effective June 1, 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 proposed 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 one of four billable TCM services is provided in a month.

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

Notes/Hearing: A public hearing was held on March 5, 2020. Public comment was due on March 13, 2020.

Adoption Notice Notes: The Department received two comments, one of which the Department determined was outside the scope of the rulemaking and one which questioned whether there is sufficient funding for regional delivery. The Department responded that there is sufficient funding. The Department is applying the rulemaking retroactively to March 1, 2020.

MAR Notice Number: 37-911

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

Summary: The Department proposed 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 Mental Health Bureau Medicaid Manual (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 anticipated a fiscal impact of \$657,943 (FY 2020), \$4,837,606 (FY 2021), and \$7,266,258 (FY 2022). The Department intended 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 was held on March 19, 2020. Public comment was due on March 27, 2020.

Adoption Notice Notes: The Department received 19+ comments, including comments supporting the rulemaking, questioning the reimbursement rate for TCM, questioning the impact of COVID-19, questioning the face-to-face requirement for meeting with families, and noting the challenges of documenting the youth's family culture. The Department mostly amended and repealed the rules as proposed, except for:

- correcting errors in the Manual that were noted in public comment;
- allowing family meetings to occur over the phone or through telehealth if face-to-face contact cannot be accomplished; and
- requiring individual treatment plans to include identification of natural supports to treatment goals intended to develop natural supports.

The Department applied 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 other rulemaking is effective November 1, 2020.

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