



Children, Families, Health, and Human Services Interim Committee

67th Montana Legislature

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August 16, 2022

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for August 2022 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 (Department) for compliance with the Montana Administrative Procedure Act. At its June 2021 meeting, the Committee elected to receive bimonthly emails from staff that summarize Department rulemaking activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the Committee's June 2022 meeting, covering Montana Administrative Register issues 12 through 15 (2022).

PROPOSAL NOTICES

MAR Notice Number: 37-947

Subject: Applied behavior analysis services

Summary: The Department is proposing to adopt eight new rules pertaining to applied behavior analysis services, including: (1) definitions; (2) initial eligibility; (3) continued eligibility; (4) service requirements; (5) concurrent services; (6) provider requirements; (7) provider reimbursement; and (8) hearing rights. The Department is also proposing to repeal rules pertaining to the children's autism waiver because the waiver is no longer available. The Department anticipates a fiscal impact of \$585,000 in FY 22 and \$1,100,000 in FY 23.

Notes/Hearing: A public hearing is scheduled at 9 a.m. on August 26, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-971

Subject: Communicable disease control

Summary: The Department is proposing the following amendments to communicable disease control rules:

- update guidelines for communicable disease control and treatment of sexually transmitted infections to reference the most current version of the guidelines;
- include day care facilities and youth camps as mandatory reporters of reportable diseases or conditions; and

- add several diseases to the reportable diseases and conditions list and the associated timelines for reporting the conditions.

The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 10 a.m. on August 25, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-975

Subject: Campgrounds, trailer courts, work camps, and youth camps

Summary: The Department is proposing to adopt 25 new rules governing trailer courts, campgrounds, youth camps, and work camps and to repeal existing rules. The Department notes that the rulemaking is intended to update and simplify the rules and to take into account new trends such as glamping and camping associated with festivals. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on July 18, 2022. Written public comment was due on July 22, 2022.

MAR Notice Number: 37-977

Subject: County and tribal matching crisis diversion grants

Summary: Currently, communities submit a letter of intent regarding the need for matching crisis diversion grant funds. The Department is proposing that crisis diversion grants will be awarded through a more formal process in which counties and federally recognized tribal governments seek funding through a request for proposal (RFP), which will be issued biennially after each legislative session. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 1 p.m. on August 26, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-981

Subject: Public sleeping accommodations

Summary: The Department is proposing to amend existing rules pertaining to hotels, motels, tourist homes, rooming houses, and boarding houses to update terminology and definitions in to be consistent with the rulemaking proposed in MAR Notice No. 37-975 (above). The Department is also proposing to adopt a new rule that would allow for variances. Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on July 18, 2022. Written public comment was due on July 22, 2022.

MAR Notice Number: 37-984

Subject: Low Income Weatherization Assistance Program (LIWAP)

Summary: The Department is proposing to amend LIWAP rules to:

- revise the allowance for weatherization funds to provide that a dwelling is not eligible if it has been weatherized within 10 years unless there is a furnace emergency;
- incorporate by reference the 2022 Weatherization Policy Manual and the National Renewal Energy Laboratory Standard Work Specifications; and
- update references to the Code of Federal Regulations.

The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 1 p.m. on August 25, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-990

Subject: Health care facility revisions

Summary: The Department is proposing to revise rules pertaining to health care facilities to update construction guidelines to the current edition, update references to the Code of Federal Regulations (CFR), and update references to the Office of Inspector General. The Department is proposing to change the requirement that staff in youth care facilities be 19 years old instead of 21 years old. The Department is also proposing to repeal numerous rules that are no longer necessary or are in conflict with the CFR. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 11 a.m. on August 30, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-994

Subject: Immunization requirements and exemptions for children and staff at child care facilities

Summary: The Department is proposing the following amendments:

- remove vaccination requirements for staff and associated recordkeeping;
- allow religious exemptions from vaccination for children attending child care; and
- clarify minimum vaccination requirements and exceptions for family, friend, and neighbor providers and relative care exempt providers.

The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 11 a.m. on August 25, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-995

Subject: Child Support Services Division guidelines and distribution

Summary: The Department is proposing to amend an administrative rule pertaining to imputed income for child support to require tribunals to consider a parent's residence to align with federal regulations. The Department is also proposing to delete a reference to a repealed statute. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 2 p.m. on August 25, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-996

Subject: Low Income Home Energy Assistance Program (LIHEAP)

Summary: The Department is proposing the following amendments:

- revise the LIHEAP benefit calculation to be based on the number of bedrooms in a house and not the number of household members;
- update the benefit award matrix;
- allow attributable credit balances to remain on recipients' accounts until spent when the Department extends the heating season;
- increase the amount of attributable credit balances that can remain on accounts from \$50 to \$500; and
- revise the deadline for submitting paid receipts for reimbursement.

The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 10 a.m. on August 26, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-997

Subject: Vending of food and beverages

Summary: The Department is proposing to repeal numerous rules pertaining to food and beverage vending. The Department notes that the rules have not been updated significantly since 1972 and are unnecessary because the Department has adopted separate rules governing retail food establishments, which apply to vending machines. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is not scheduled. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-999

Subject: Living wills

Summary: The Department is proposing to amend rules pertaining to living wills to remove references to the COMFORT ONE system. The system no longer exists and has been replaced by the Provider Orders for Life-Sustaining Treatment (POLST). The Department is also proposing to adopt the current version of POLST. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 2 p.m. on August 26, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-1003

Subject: Crisis system restructuring

Summary: The Department is proposing to repeal rules pertaining to the mental health services plan and the 72-hour presumptive eligibility program, under which services are provided to individuals who do not qualify for Medicaid services but who qualify for non-Medicaid mental health services paid for with state funds. Through the HEART Initiative, the Department proposed to align non-Medicaid mental health services with services provided through Medicaid. The Department notes that the alignment of non-Medicaid mental health services will occur in concurrent rulemaking. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 1 p.m. on August 30, 2022. Written public comment is due by 5 p.m. on September 2, 2022. **Emailed agency rule reviewer re: whether notice requirements in 53-21-1402, MCA, apply and whether the requirements were met.

MAR Notice Number: 37-1005

Subject: Foster care immunization requirements

Summary: The Department is proposing to amend requirements for children residing in foster homes, other than the foster child, to allow for a religious exemption, which must be completed prior to licensure. The Department notes that it is proposing the rule out of concern that the existing rule, which does not contain a religious exemption, violates the Montana Religious Freedom Restoration Act (27-33-105, MCA), which was enacted in 2021. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 11 a.m. on August 26, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-1008

Subject: Medically needy living allowance deduction

Summary: The Department is proposing to insert an annual Social Security cost of living adjustment (COLA) to the medically needy living allowance deduction. The Department states this is necessary because it will allow Montanans to spend additional funds they receive through the COLA toward non-health care related expenses instead of having to pay a higher monthly incurment for Medicaid coverage.

Notes/Hearing: A public hearing is scheduled at 11 a.m. on August 29, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-1010

Subject: Substance use disorder (SUD) programs, licensure of facilities, and behavioral health and developmental disability Medicaid and non-Medicaid manuals

Summary: As part of the HEART Initiative, the Department is proposing to revise SUD facility licensure rules to align with the current American Society of Addiction Medicine (ASAM) Criteria. The Department is also proposing to update the AMDD Medicaid services provider manual for SUD and adult mental health and the non-Medicaid services provider manual for SUD and adult mental health to reflect ASAM requirements for reimbursement and to address other inconsistencies identified by providers. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 9 a.m. on August 30, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

MAR Notice Number: 37-1012

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

Summary: The Department is proposing to align non-Medicaid and Medical mental health and SUD services and insert a fee schedule for the Goal 189 Program, which provides services and items to assist individuals transitioning out of or avoiding admission to Montana State Hospital. The Department is also proposing, effective October 1, 2022, a .45% increase in inpatient non-critical access hospital reimbursement for the remaining nine months of FY 23, which combined with the FY 22 decrease will net an overall targeted 2023 biennium decrease of 1%. The Department is also proposing changes for inpatient hospitals involving the APR grouper version and is proposing a revised conversion factor for outpatient services. The Department anticipates a fiscal impact (see proposal notice for fiscal impact chart).

Notes/Hearing: A public hearing is scheduled at 9 a.m. on August 25, 2022. Written public comment is due by 5 p.m. on September 2, 2022.

AMENDED NOTICES

MAR Notice Number: 37-985

Subject: Financial eligibility criteria for Montana Telecommunications Access Program (MTAP)

Summary: The Department proposed to update financial eligibility criteria for MTAP to revise the maximum level of allowable income from 250% of the 2021 US Department of Health and Human Services poverty guidelines for households to 250% of the 2022 poverty guidelines. The Department did not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on June 16, 2022. Written public comment was originally due on June 24, 2022.

Amendment Notes: On August 5, 2022, the Department published an amended proposal notice, indicating that the initial notice had indicated that the rulemaking would go into effect upon publication of the adoption notice. The Department intends for the rulemaking to go into effect retroactively to January 12, 2022. The Department has extended the written public comment deadline to 5 p.m. on September 2, 2022.

ADOPTION NOTICES

MAR Notice Number: 37-976

Subject: HMK dental procedure codes

Summary: The Department proposed to update the HMK dental fee schedule to align with the state employee benchmark plan and to update procedure codes. The Department did not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on May 19, 2022. Written public comment was due on May 27, 2022.

Adoption Notice Notes: The Department received no public comment and amended the rule as proposed. The rulemaking went into effect July 1, 2022.

MAR Notice Number: 37-983

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

Summary: The Department proposed numerous updates to Medicaid and non-Medicaid provider rates, fee schedules, and effective dates to incorporate a 1% provider rate increase and to incorporate a 1.9% provider rate increase for certain targeted case management services. For a detailed description of the fiscal impact and providers affected, please see the proposal notice.

Notes/Hearing: A public hearing was held on May 19, 2022. Written public comment was due on May 27, 2022.

Adoption Notice Notes: The Department received several comments concerning the rulemaking, mainly concerning the reimbursement of assisted living facilities. The Department amended the rulemaking as proposed. The rulemaking went into effect July 1, 2022.

MAR Notice Number: 37-988

Subject: Medicaid hospice fee reimbursement and care program

Summary: The Department proposed to adopt and incorporate by reference the most recent CFR sections pertaining to hospice program rules. The Department also proposed to update the Medicaid hospice reimbursement fee schedule to reflect changes in federal hospice reimbursement rates. The Department anticipated that the change to the fee schedule would result in an approximate reimbursement rate increase of 2%, having an estimated fiscal impact of \$72,899 in total funds in FY 21.

Notes/Hearing: A public hearing was held on July 18, 2022. Written public comment was due on July 22, 2022.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rate increase is effective retroactively to October 1, 2021. All other changes went into effect August 6, 2022.

MAR Notice Number: 37-989

Subject: Nursing facility reimbursement

Summary: The Department proposed to update the nursing facility reimbursement rate for SFY 2023 to incorporate a .3% flat rate increase. The Department anticipated that the estimated total cost of this rate increase is approximately \$469,740. The Department intended for the rulemaking to be effective July 1, 2022.

Notes/Hearing: A public hearing was held May 19, 2022. Written public comment was due on May 27, 2022.

Adoption Notice Notes: The Department responded to 18+ public comments, mainly regarding the inadequacy of the proposed rate and the risk of facility closure. The Department adopted the rulemaking as proposed. The rulemaking went into effect July 1, 2022.

MAR Notice Number: 37-991

Subject: Families Achieving Independence in Montana (FAIM)

Summary: The Department proposing to repeal several rules pertaining to FAIM, which ended in 2004. The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was held on June 16, 2022. Written public comment was due on June 24, 2022. **There are numerous existing ARMs that contain references to FAIM. Emailed agency rule reviewer re: whether those ARMs should be amended as well. Received response that those ARMs will be amended in separate rulemaking.

Adoption Notice Notes: The Department received no public comment and repealed the rules as proposed. The rules were repealed August 6, 2022.

MAR Notice Number: 37-993

Subject: Developmental disabilities waiver programs reimbursement

Summary: The Department proposed to adopt an updated version of the Developmental Disabilities Program Services Manual that incorporated a waiver definition update to remote monitoring, allowed retainer days for day supports and activities, and provided billing and reimbursement changes. The Department also proposed a 1.9% average provider rate increase and increased rates for workers who provide direct care. The Department intended for the rulemaking to go into effect July 1, 2022. The Department anticipated a total fund fiscal impact of \$2,449,601 for the provider rate increase and a total fund fiscal impact of \$990,290 for the direct care recruitment and retention increase.

Notes/Hearing: A public hearing was held on June 2, 2022. Written public comment was due on June 10, 2022.

Adoption Notice Notes: The Department received one comment in support of the proposed rate increase for home-delivered meals and adopted the rulemaking as proposed. The rulemaking is retroactively effective to July 1, 2022.