



**Children, Families, Health, and Human Services Interim  
Committee**

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**67th Montana Legislature**

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January 10, 2022

TO: Children, Families, Health, and Human Services Interim Committee  
FROM: Alexis Sandru, Staff Attorney  
RE: Administrative Rule Report for January 2022 Meeting

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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 November 2021 meeting, covering Montana Administrative Register issues 21 through 24.

**PROPOSAL NOTICES**

**MAR Notice Number: 37-909**

Subject: Assisted living rules relating to background checks and category D endorsements

Summary: The Department is proposing to adopt 9 new rules concerning category D assisted living facilities. The proposed new rules establish requirements for construction, administrator qualifications, disclosures to residents, staffing requirements (including training), resident assessments, health care planning for residents, medication use and physician orders, discharge, and seclusion room requirements. The Department is proposing rulemaking to establish requirements for background checks of employees. The Department is also proposing amendments to reflect current practices and for consistency.

The Department does not anticipate fiscal impact; however, facilities that have not been utilizing background checks may experience a fiscal impact.

Notes/Hearing: A public hearing was held on December 30, 2021. Written public comment was due on January 7, 2022.

**MAR Notice Number: 37-954**

Subject: Certificate of need

Summary: The Department is proposing amendments to certificate of need administrative rules in order to conform with HB 231 (2021), which revised certificates of need to include only long-term care facilities and services, and to update terminology and other references. The Department anticipates no fiscal impact.

Notes/Hearing: A public hearing was held on December 9, 2021. Written public comment was due on December 17, 2021.

**MAR Notice Number: 37-963**

Subject: Comprehensive school and community treatment (CSCT)

Summary: The Department is proposing the following amendments for the CSCT program:

- use a new assessment tool to determine eligibility for youth, effective April 1, 2022;
- eliminate signed referral documents and include youth currently receiving CSCT services in the referral requirement criteria for acuity;
- increase utilization of outcome and program measurements;
- revise reimbursement limits to no more than 360 service days each month for one CSCT team of three members and eliminate the requirement that a CSCT clinician provide 40% of the billable services;
- implement core service requirements;
- revise CSCT team structure to provide that a team must consist of one clinician and up to two behavioral aides, with one team being allowed to provide services at two schools;
- revise the requirement that mental health leadership meet with school leadership every 90 to four times annually;
- promote continuous treatment by requiring documentation that includes the reasons why a youth who is enrolled in CSCT does not receive services during the summer and documentation of the licensed mental health center's attempts to engage the youth and family in summer services;
- revise training requirements to include trauma-informed practices and topics that increase staff competency in working with youth with serious emotional disturbance to decrease severity of presenting symptoms; and
- provide that reimbursement for concurrent CSCT and home support services will not be allowed without prior authorization, effective July 1, 2022.

The Department anticipates a fiscal impact (see note below).

Notes/Hearing: A public hearing was held on December 1, 2021. Written public comment was initially due on December 3, 2021. \*\*The fiscal impact table was inadvertently omitted from the proposal notice – contacted agency rule reviewer and was informed that the Department will file an amended notice to address this.

*Amendment Notes:* The Department has filed an amended notice providing that the proposed amendments will not result in a fiscal impact to the Department's budget. The Department notes that rate changes for CSCT will be proposed in the future. A second public hearing was held on December 16, 2021. The deadline for written public comment was extended to December 17, 2021.

**MAR Notice Number: 37-967**

Subject: Marijuana sampling protocols

Summary: The Department is proposing the following marijuana sampling protocols:

- adopt a new rule providing for quality assurance sampling protocol;
- adopt a new rule providing for the suspension of a testing laboratory's license if the testing laboratory is providing inconsistent results;



- revise testing laboratory endorsement requirements, general requirements, and definitions;
- revise failed test protocol to provide that test batches that fail pesticide analysis cannot be remediated and must be destroyed;
- provide that all marijuana items intended for direct sale or transfer to customers must be tested in their final form and that the addition of any ingredient after testing requires retesting;
- revise requirements testing for harmful mold, E. coli, and heavy metals; and
- general revisions reflecting the transfer in HB 701 (2021) of licensure to the Department of Revenue.

The Department anticipates no fiscal impact.

Notes/Hearing: A public hearing was held on December 9, 2021. Written public comment was due on December 17, 2021.

**MAR Notice Number: 37-972**

Subject: Update of effective dates of Medicaid fee schedules

Summary: The Department is proposing:

- to revise the effective date of fee schedules for various services to include updated Medicare procedure codes that CMS will adopt in 2022, including new code additions, code deletions, and changes to existing code descriptions and rates for various services (see proposal notice for list of services); and
- for the Developmental Services Division, revise the CSCT rate to \$96 per day of service. The Department is also proposing a rural differential rate of 115%.

The Department does not anticipate a fiscal impact except for the CSCT rate, which the Department anticipates will result in a fiscal impact of \$4,889,715 in total funds for SFY 2022.

Notes/Hearing: A public hearing is scheduled on January 13, 2022. Written public comment is due on January 21, 2022.

**ADOPTION NOTICES**

**MAR Notice Number: 37-949**

Subject: Developmental Disabilities Program provider rates updates

Summary: The Department proposed to, effective July 1, 2021:

- give an approximate 1% provider rate increase to Medicaid-funded Developmental Disabilities Home and Community-Based Services waiver services and a \$0.24/hour payment for recruitment and retention of direct care workers for specified services; and
- give an approximate 1% rate increase to targeted case management 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.

The Department anticipated the following fiscal impacts: \$1,354,154 (total funds – waiver provider rate increase); \$1,106,482 (total funds – direct care retention and recruitment increase); and \$38,944.80 (total funds – targeted case management increase).

Notes/Hearing: A public hearing was held on July 15, 2021. Written public comment was due by on July 23, 2021.

Amendment Notes: Citing feedback from CFHHS, the Department amended the rulemaking to propose:

- a 1.9% provider rate increase for the Medicaid funded developmental disabilities home and community-based waiver services and distribute an additional \$1,004,294 for recruitment and retention of direct care workers, which the Department noted results in a combined weighted average increase of 2.7%; and
- a 1.9% rate increase for targeted case management 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.

The Department anticipated the following fiscal impacts: \$2,460,636 (total funds – waiver provider rate increase); \$1,004,294 (total funds – direct care retention and recruitment increase); and \$73,850 (total funds – targeted case management increase). A second public hearing was held on September 30, 2021. Written public comment was due on October 8, 2021.

Adoption Notice Notes: The Department received numerous comments related to the allocation of the funding and adopted the rulemaking as proposed in the amended notice. The rulemaking is retroactively effective to July 1, 2021.

**MAR Notice Number: 37-957**

Subject: Update Medicaid provider rates, fee schedules, and effective dates

Summary: Citing HB 2 (2021) reductions, the Department proposed to:

- adopt a fee schedule for inpatient hospitals, dated October 1, 2021, which provides for an overall inpatient hospital reimbursement reduction of 1% in SFY 2022;
- adopt and incorporate by reference the APR-DRG Table of Weights and Thresholds, effective October 1, 2021, and to decrease base rates for general hospitals, centers of excellence, and long-term acute care hospitals;
- decrease the conversion factor for outpatient services from \$56.64 to \$55.89, which provide for an overall 1% provider rate reduction in SFY 2022. The Department noted that "while the HB 2 reduction does not specify Free Standing Birth Centers, the reimbursement rates for this provider will be reduced the equivalent of 1% during SFY 2022."
- update the fee schedule for prosthetic devices, durable medical equipment, and medical supplies to implement CMS quarterly updates for these services.

The Department anticipated a fiscal impact and intended to apply the rulemaking retroactively to October 1, 2021.

Notes/Hearing: A public hearing was held on October 28, 2021. Written public comment was due on November 5, 2021.

Adoption Notice Notes: The Department received a comment in support of the rulemaking and amended the rule as proposed. The rulemaking is retroactively effective to October 1, 2021.

**MAR Notice Number: 37-958**



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

Summary: The Department proposed to amend the criteria for qualifying for home and community-based waiver services for adults with SDMI to:

- require three levels of high-level impairment instead of the existing two levels; and
- revise the qualifying SDMI diagnosis list to conform with the approved SDMI home and community-based services waiver.

The Department anticipated no fiscal impact and intended to apply the rulemaking retroactively to October 9, 2021.

Notes/Hearing: A public hearing was held on September 30, 2021. Written public comment was due on October 8, 2021.

Adoption Notice Notes: The Department received no public comment and amended the rulemaking as proposed. The rulemaking is retroactively effective to October 9, 2021.

**MAR Notice Number: 37-959**

Subject: Child care licensing

Summary: The Department proposed to adopt two new rules pertaining to child care licensing, which provide requirements for relative care exempt providers and, in accordance with federal requirements, provide for identifying and preventing shaken baby syndrome and abusive head trauma.

The Department also proposed several amendments to existing administrative rules, including:

- revise definitions to expand the number of children for whom a day care center can provide care from 13 children to 16 children, realign definitions, and change the number of children for whom a family, friend, and neighbor license can provide care from two to four children;
- clarify family, friend, and neighbor licensure requirements, including requiring pediatric first aid instead of general first aid;
- remove references to the Quality Assurance Division because child care licensing is now part of the Early Childhood and Family Support Division;
- add a 30-day grace period for immunization requirements for children experiencing homelessness or who are in foster care;
- revise staff recordkeeping, teacher orientation training, staffing qualification requirements, and director responsibilities to reflect knowledge of pediatric first aid;
- per SB 142 (2021), clarify that a group day care home can provide care for 10 children; and
- revise the address at which safe sleep requirements may be located.

The Department did not anticipate a fiscal impact and intended to apply the rulemaking retroactively to October 1, 2021. The Department noted that the rulemaking may affect small businesses and that there may be a negative impact for child care centers participating in the Best Beginnings STARS to Quality Program who under the rulemaking will meet the criteria for a group day care home rather than a child care center.

Notes/Hearing: A public hearing was held on October 28, 2021. Written public comment was due on November 5, 2021. \*\*Repealed statutes cited in auth/imp citations – emailed agency rule reviewer.

*Adoption Notice Notes:* The Department received several comments -- mainly pertaining to the impact of capacity changes on providers and staffing ratios -- and adopted the rulemaking as proposed. The Department also corrected the erroneous citations in the auth/imp citations. The rulemaking is retroactively effective to October 1, 2021.

**MAR Notice Number: 37-961**

Subject: Adoption of new rules pertaining to public participation

Summary: The Department proposed to adopt five new rules that set forth procedures for public participation in agency decisions. The proposed new rules: (1) adopt the attorney general model rules for public participation; (2) outline the objectives for public participation; (3) provide guidance for determining what matters constitute matters of significant public interest; (4) provide methods for notice and means for public participation; and (5) direct the public to the public information officer or the Department's website.

Notes/Hearing: A public hearing was held on October 28, 2021. Written public comment was due on November 5, 2021.

*Adoption Notice Notes:* The Department received no public comment and adopted the rulemaking as proposed. The rulemaking is effective January 1, 2022.

**MAR Notice Number: 37-965**

Subject: Adoption of new rule pertaining to health emergency waiver

Summary: The Department proposed to adopt a new rule which would incorporate the emergency rulemaking adopted in MAR notice numbers 37-955 (providing regulatory flexibilities for health care providers, health care facilities, and other entities) and 37-964 (waiving certain hospital swing-bed requirements). The Department noted that the flexibilities are necessary to comply with federal waivers and that the Department intended for the rulemaking to expire upon conclusion of the nationwide public health emergency, as declared by the secretary of the federal Health and Human Services, or at the conclusion of any phase-down of federal waivers, whichever is later. The Department intended to apply the rulemaking retroactively to October 30, 2021, and other than savings resulting from the enhanced FMAP does not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on October 28, 2021. Written public comment was due on November 5, 2021.

*Adoption Notice Notes:* The Department received no public comment and adopted the rulemaking as proposed. The rulemaking is retroactively effective to October 30, 2021.

**MAR Notice Number: 37-966**

Subject: Update optometric provider rates

Summary: In response to CFHHS' informal objections to proposed provider rates for optometric services, the Department published a separate proposal notice for optometric services. The Department noted that, pursuant to CFHHS' recommendations, on September 29, 2021, the Department met with members of the Montana Optometric Association and walked through the rate setting process. The Department then proposed an optometric provider rate of reimbursement



(PRR), which is a pricing factor, of 114.79% with an effective date of July 1, 2021. The Department noted that the PRR will result in a weighted average 1% rate increase for optometrists and opticians.

The Department anticipated a fiscal impact.

Notes/Hearing: A public hearing was held on November 12, 2021. Written public comment was due on November 19, 2021.

Adoption Notice Notes: The Department received numerous comments concerning the proposed rate but adopted the rulemaking as proposed. The rulemaking is retroactively effective to July 1, 2021.

**MAR Notice Number: 37-968**

Subject: Montana telecommunications access program (MTAP)

Summary: The Department proposed to amend financial eligibility criteria for MTAP to revise the maximum level of allowable income from 250% of the 2020 U.S. Department of Health and Human Services poverty guidelines for households to 250% of the 2021 federal poverty guidelines. The Department also proposed to no longer publish the detailed income calculations in the ARM; rather, the Department will publish those calculations on the MTAP website. The Department anticipated no fiscal impact.

Notes/Hearing: A public hearing was not scheduled. Written public comment was due on December 3, 2021.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rulemaking is retroactively effective to January 13, 2021.

**MAR Notice Number: 37-969**

Subject: Big Sky Rx benefit

Summary: The Department proposed to increase the monthly premium assistance amount under the Big Sky Rx program from \$38 to \$38.90. The Department anticipated an increase in state special fund spending of \$16,968 annually. The Department intended to apply the rulemaking effective January 1, 2022.

Notes/Hearing: A public hearing was held on November 29, 2021. Written public comment was due on December 3, 2021.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rulemaking is effective January 1, 2022.

