



Children, Families, Health, and Human Services Interim Committee

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67th Montana Legislature

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June 17, 2022

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for June 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 May 2022 meeting, covering Montana Administrative Register issues 9 through 11 (2022).

PROPOSAL NOTICES

MAR Notice Number: 37-979

Subject: Assisted living rules related to background checks and category D endorsement

Summary: The Department is proposing to adopt nine new rules pertaining to the category D endorsement and to amend existing rules pertaining to assisted living facilities. The proposed category D rules:

- (1) specify construction requirements for the facility;
- (2) set administrator qualifications, including requiring that 8 of the 16 annual hours of continuing education be in the field of mental health;
- (3) require certain disclosures to residents;
- (4) set staffing and training requirements, including requiring that all staff complete four hours of annual training related to mental health;
- (5) provide for resident assessments;
- (6) require health care plans for residents;
- (7) provide requirements for self-administration and administration of medications;
- (8) set forth discharge processes; and
- (9) provide seclusion room requirements.

The Department is also proposing numerous amendments to assisted living rules, including but not limited to:

- requiring a name-based or FBI fingerprint background check on all employees;

- requiring additional training for staff who assist with self-administration of medication;
- requiring that all direct care staff receive, at minimum, two hours of training in dementia care upon hire and annually thereafter; and
- updating furnishing and construction requirements for facilities.

The Department notes that there may be a fiscal impact for facilities who are not currently utilizing the services of a criminal background check contractor. The Department also anticipates a fiscal impact associated with dementia training for direct care staff.

Notes/Hearing: A public hearing was held on June 16, 2022. Written public comment is due on June 24, 2022. **The amendment to 37.106.2823 requires that facilities develop policies on medical and recreational use of marijuana pursuant to 50-46-318 and 50-46-320, MCA. Those statutes were repealed effective 1/1/2022. New rule V contains a reference to 50-5-224, which has been renumbered as 53-21-199. Notified agency rule reviewer.

MAR Notice Number: 37-985

Subject: Financial eligibility criteria for Montana Telecommunications Access Program (MTAP)
Summary: The Department is proposing 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 does not anticipate a fiscal impact.

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

MAR Notice Number: 37-991

Subject: Families Achieving Independence in Montana (FAIM)

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

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

MAR Notice Number: 37-993

Subject: Developmental disabilities waiver programs reimbursement

Summary: The Department is proposing to adopt an updated version of the Developmental Disabilities Program Services Manual that incorporates a waiver definition update to remote monitoring, allows retainer days for day supports and activities, and provides billing and reimbursement changes. The Department is also proposing a 1.9% average provider rate increase and increased rates for workers who provide direct care. The Department intends for the rulemaking to go into effect July 1, 2022. The Department anticipates 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.

MAR Notice Number: 37-1002

Subject: Changing the identification of sex on birth certificates

Summary: The Department is proposing to provide that for any period in which the Department is prohibited from enforcing SB 280 (2021) or if SB 280 is held invalid, then the sex of a registrant may be corrected only if: (1) the sex was listed incorrectly because of a scrivener's error or a data entry error; or (2) the sex of the individual was misidentified on the original certificate and the Department receives a correction affidavit and supporting documents, including a copy of the results of chromosomal, molecular, karyotypic, DNA, or genetic testing, that identify the sex of the individual. This amendment would make permanent the emergency rule the Department adopted on May 23, 2022, via MAR Notice No. 37-1001. The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing is scheduled at 9 a.m. on June 30, 2022. Written public comment is due on July 8, 2022.

ADOPTION NOTICES

MAR Notice Number: 37-978

Subject: Medicaid fee schedules and effective dates

Summary: The Department proposed to update the fee schedule for prosthetic devices, durable medical equipment, and medical supplies to update procedure codes that the federal Medicare program will enact in April 2022. The Department did not anticipate a fiscal impact and intended to apply the rulemaking retroactively to April 1, 2022.

Notes/Hearing: A public hearing was held on April 14, 2022. Written public comment was due on April 22, 2022. **Could not locate the fee schedule referenced in rulemaking – emailed agency rule reviewer. The Department subsequently posted the proposed schedule.

Adoption Notice Notes: The Department received no public comment and amended the rulemaking as proposed. The Department intends to apply the rulemaking retroactively to April 1, 2022.

MAR Notice Number: 37-1001

Subject: Emergency rule re: changing the identification of sex on birth certificates

Summary: Effective May 23, 2022, the Department has adopted an emergency rule for changing the identification of an individual's sex on a birth certificate. Citing the recent enjoinder of SB 280 (2021), the Department noted that it is left in an ambiguous situation without a regulatory mechanism to process birth certificate sex designation amendments. The emergency rule provides that the sex designation may be corrected only if: (1) the sex was listed incorrectly because of a scrivener's error or a data entry error; or (2) the sex of the individual was misidentified on the original certificate and the Department receives a correction affidavit and supporting documents, including a copy of the results of chromosomal, molecular, karyotypic, DNA, or genetic testing, that identify the sex of the individual.

Notes: Per 2-4-303, MCA, the emergency rule is in effect for no longer than 120 days.