



Children, Families, Health, and Human Services Interim Committee

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67th Montana Legislature

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March 4, 2022

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for March 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 January 2022 meeting, covering Montana Administrative Register issues 1 through 4 (2022).

PROPOSAL NOTICES

MAR Notice Number: 37-973

Subject: Child-facing employee certification and supervisory training

Summary: In response to HB 459 and HB 416 (2021), the Department is proposing three new rules that would:

- implement certification requirements for all Child and Family Services Division employees who are employed in child-facing employment positions, which includes required training and requiring that all current employees complete and pass a competency examination by October 1, 2023. Employees who complete the initial certification process are required to complete 20 hours of annual training.
- implement supervisory training for child protection specialist supervisors; and
- require 20 hours of annual child welfare supervisory training for child protection specialist supervisors.

The Department does not anticipate a fiscal impact.

Notes/Hearing: A public hearing was held on March 3, 2022. Written public comment is due on March 11, 2022.

MAR Notice Number: 37-974

Subject: Child-placing agency definitions

Summary: The Department is proposing to revise the definition of child placing agency to exclude health care providers and attorneys who, in accordance with 52-8-103(2), MCA, assist a

parent in identifying or locating a person interested in adopting the parent's child or in identifying or locating a child to be adopted. The proposed amendment reflects statutory changes made in HB 502 (2021) and clarifies that attorneys and health care providers may engage in the activities authorized under 52-8-103 without being required to be licensed as a child-placing agency.

Notes/Hearing: A public hearing was held on March 3, 2022. Written public comment is due on March 11, 2022.

ADOPTION NOTICES

MAR Notice Number: 37-954

Subject: Certificate of need

Summary: The Department proposed 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 anticipated no fiscal impact.

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

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rulemaking is retroactively effective to October 1, 2021.

MAR Notice Number: 37-963

Subject: Comprehensive school and community treatment (CSCT)

Summary: The Department proposed 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 anticipated a fiscal impact.

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 filed an amended notice providing that the proposed amendments will not result in a fiscal impact to the Department's budget. The Department noted that rate changes for CSCT would 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.

Adoption Notice Notes: The Department received numerous public comments and provided 18 responses, including but not limited to the following:

- clarifying billable days per month team caps and prior authorization requirements for changing team numbers;
- allowing CSCT staff to bill for other Medicaid services;
- removing the requirement that prior authorization is required for CSCT and home support services to be provided concurrently; and
- clarifying that proposed frontier rates will be based on school location and not the youth's residence.

Except for the portion of the rulemaking pertaining to outcome measurements, which goes into effect March 1, 2022, the rulemaking was retroactively effective to October 1, 2022.

MAR Notice Number: 37-967

Subject: Marijuana sampling protocols

Summary: The Department proposed 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 its 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 anticipated no fiscal impact.

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

Adoption Notice Notes: The Department received considerable public comment and included 85 separate responses in the adoption notice. In response to the comments received, the Department made numerous revisions to the rulemaking (see adoption notice). New testing requirements relating to Shiga-toxin producing *Escherichia coli* and speciated aspergillus testing under ARM 37.107.316(6)(b), (6)(c), and (7) are effective March 14, 2022. The remainder of the rulemaking was effective January 15, 2022.

MAR Notice Number: 37-972

Subject: Update of effective dates of Medicaid fee schedules

Summary: The Department proposed:

- 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, to revise the CSCT rate to \$96 per day of service. The Department also proposed a rural differential rate of 115%.

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

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

Adoption Notice Notes: The Department received one public comment regarding an erroneous reference in the statement of reasonable necessity to a 2021 current dental terminology. The Department corrected the administrative error and adopted the rulemaking as proposed. The rulemaking is retroactively effective to January 1, 2022.