



Children, Families, Health, and Human Services Interim Committee

67th Montana Legislature

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May 2, 2022

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Administrative Rule Report for May 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 March 2022 meeting, covering Montana Administrative Register issues 5 through 8 (2022).

PROPOSAL NOTICES

MAR Notice Number: 37-976

Subject: HMK dental procedure codes

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

Notes/Hearing: A public hearing is scheduled at 9 a.m. on May 19, 2022, via remote conferencing (see the proposal notice for conferencing platform options). Written public comment is due by 5 p.m. on May 27, 2022.

MAR Notice Number: 37-978

Subject: Medicaid fee schedules and effective dates

Summary: The Department is proposing 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 does not anticipate a fiscal impact and intends 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. Fee schedule was subsequently uploaded to Department website.

MAR Notice Number: 37-983

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

Summary: The Department is proposing 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 is scheduled at 10 a.m. on May 19, 2022, via remote conferencing (see the proposal notice for conferencing platform options). Written public comment is due by 5 p.m. on May 27, 2022.

MAR Notice Number: 37-989

Subject: Nursing facility reimbursement

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

Notes/Hearing: A public hearing is scheduled at 11 a.m. on May 19, 2022, via remote conferencing (see the proposal notice for conferencing platform options). Written public comment is due by 5 p.m. on May 27, 2022.

ADOPTION 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 proposed 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 did not anticipate a fiscal impact.

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

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rulemaking went into effect April 30, 2022.

MAR Notice Number: 37-974

Subject: Child-placing agency definitions

Summary: The Department proposed 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 was due on March 11, 2022.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The rulemaking went into effect April 16, 2022.

OTHER NOTICES

MAR Notice Number: 37-909

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

Summary: The Department proposed to adopt 9 new rules concerning category D assisted living facilities. The proposed new rules established 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 proposed rulemaking to establish requirements for background checks of employees. The Department also proposed amendments to reflect current practices and for consistency.

The Department did 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 January 7, 2022. CFHHS informally objected to this rulemaking on January 10, 2022. The objection dissolved on January 19-20, 2022, when CFHHS met and did not renew the objection. The Department had agreed to revisit the rulemaking and include dementia training requirements.

Notice Notes: The Department has published a notice of decision noting that, because of the various changes made to the rulemaking as proposed, it will not proceed with this rulemaking but will publish a new proposal notice and start over with the process: "After the public hearing, various changes were made to the proposed and amended rules. It was determined that for clarity and readability a new MAR notice would be prepared that included all the official text of the rules as well as the revisions. The department expects this action to promote a better understanding of the rules. The new MAR notice will be filed as soon as possible."