



Children, Families, Health, and Human Services Interim Committee

68th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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January 18, 2024

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Maddie Krezowski, Staff Attorney
RE: Administrative Rule Report – January 2023

This report covers proposed administrative rules from the Department of Public Health and Human Services (DPHHS) as of January 2, 2024. Current rule notices are available at www.mtrules.org (search by notice number in the bottom right-hand search box, i.e., 37-1028).

Rules proposed since the committee's last meeting are highlighted in yellow.

CURRENT PROPOSAL NOTICES

MAR Notice Number 37-1009

Subject: Community First Choice services and self-directed personal care services

Date Notice Sent to Committee: November 7, 2023

Proposal Notice Publication Date: November 17, 2023

Public Hearing Date: None scheduled

Public Comment Due Date: December 15, 2023

Possible Adoption and Effective Date:¹ The agency can adopt the rule after December 17, 2023.

Notice of adoption for the rule must be published before May, 17, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Deletes quarterly reporting requirements of personnel information from self-directed CFCS and PAS provider agencies. This deletion aligns the ARM with a 2017 court order finding the reporting requirements invalid and brings the rule into alignment with current department practice.

MAR Notice Number: 37-1025

Subject: Developmental Disabilities Program Incident Reporting and Handling

Date Notice Sent to Committee: August 25, 2023

Proposal Notice Publication Date: August 25, 2023

Public Hearing Date: September 15, 2023

Public Comment Due Date: September 22, 2023

Possible Adoption and Effective Dates:¹ The agency can adopt the rule after September 24, 2023. Notice of adoption for the rule must be published before February 25, 2024.

¹ MAPA provides a timeframe for the adoption of proposed rules. In general, a rule may not be adopted until at least 30 days after the publication of the proposal notice and the adoption notice must be published within 6 months of the

Link to text: The proposal notice is available [here](#). The link to the updated Developmental Disabilities Program Incident Management Manual is [here](#).

Brief description: Adopts and incorporates amendments to the revised Developmental Disabilities Program Incident Management Manual. The changes to the manual eliminate unnecessary and duplicative procedures.

MAR Notice Number: 37-1031

Subject: Children's Mental Health Services

Date Notice Sent to Committee: October 24, 2023, amended notice November 28, 2023

Proposal Notice Publication Date: November 3, 2023, amended notice December 8, 2023

Rescheduled Public Hearing Date: ~~November 22, 2023~~ December 28, 2023

Updated Public Comment Due Date: ~~December 1, 2023~~ January 5, 2024

Possible Adoption and Effective Dates:¹ The agency can adopt the rule after ~~December 3, 2023~~ January 7, 2024. Notice of adoption for rule must be published before ~~May 3, 2024~~ June 8, 2024.

Link to text: The proposal notice is available [here](#). The link to the updated Children's Mental Health Bureau Medicaid Services Provider Manual is available [here](#). The amended notice is available [here](#).

Brief description: Adopts and incorporates changes to the Children's Mental Health Bureau Medicaid Services Provider Manual. These changes make Mental Health Intensive Outpatient Therapy a permanent benefit, allow for the use of telehealth for certain youth mental health services, remove certain prior authorization requirements, amend continued stay review requirements for therapeutic group homes, clarify that an out-of-state therapeutic group home must be licensed in the state in which it operates, and remove an outdated minimum pay requirement for direct care workers.

MAR Notice Number: 37-1032

Subject: Home and Community Based Services (HCBS) Setting Regulations

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 12, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024. Notice of Adoption for the rule must be published before June 22, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Brings ARM into compliance with federal requirements under 42 CFR 441.301 and 42 CFR 441.710 so HCBS providers can receive federal Medicaid reimbursements. These regulations ensure, among other things, that individuals receiving HCBS have access to the greater community, including opportunities to seek employment and work in competitive settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS.

publication of the proposal notice. See §§ 2-4-302 and 2-4-305. Rulemaking is adopted upon filing the adoption notice with the Secretary of State and effective upon publication of the adoption notice in the MAR. See 2-4-306, MCA. The Secretary of State publishes the MAR two times a month. An agency must file notices with the Secretary of State's office at least 10 days before publication in the MAR. See ARM 1.2.419.

MAR Notice Number: 37-1039

Subject: Chemical Dependency Programs – Medicaid Mental Health Services

Date Notice Sent to the Committee: October 10, 2023

Proposal Notice Publication Date: October 20, 2023

Public Hearing Date: November 13, 2023

Public Comment Due Date: November 17, 2023

Possible Adoption and Effective Dates:¹ The agency can adopt the rule after November 19, 2023. Notice of adoption for the rule must be published before April 10, 2024.

Link: The proposal notice is available [here](#). The updates to the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health and the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder are available [here](#).

Brief description: Adopts and incorporates changes to the BHDD Medicaid and non-Medicaid manuals. These changes add policies for Mobile Crisis Response Services and Mobile Crisis Care Coordination to better align with the Crisis Now model.

MAR Notice Number: 37-1041

Subject: Developmental Disabilities Program Plan of Care

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 12, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024. Notice of adoption for the rule must be published before June 22, 2024.

Link: The proposal notice is available [here](#). The draft Personal Support Plan Manual is available [here](#).

Brief Description: Adopts and incorporates the revised Personal Supports Plan (PSP) Manual. Revisions to the manual include update language pertaining to PSP timeframes, targeted case management, action plans and protocols, behavioral supports and safety mods, and the removal of language pertaining to vision statement. Repeals prior rules pertaining to creating PSPs.

MAR Notice Number: 37-1044

Subject: Licensure of Day Care Facilities

Date Notice Sent to Committee: October 10, 2023

Proposal Notice Publication Date: October 20, 2023

Public Hearing Date: November 13, 2023

Public Comment Due Date: November 17, 2023

Possible Adoption and Effective Dates:¹ The agency can adopt the rule after November 19, 2023. Notice of adoption for the rule must be published before April 20, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Repeals the entirety of ARM Title 37, chapter 95, and creates an updated, restructured child care licensing and registration framework.

Notes for the committee: The proposal notice states that the proposed rule will significantly and directly impact small businesses but does not provide a small business impact analysis under § 2-4-111, MCA. Under § 2-4-405, MCA, the committee may require the department to prepare an economic impact statement of the rule as proposed.

MAR Notice Number: 37-1045

Subject: Public Sleeping Accommodations

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 15, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024.

Notice of adoption for the rule must be published before June 22, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Corrects the inadvertent removal of prior rule language addressing food safety requirements for public sleeping accommodations that are exempt from obtaining a retail food license.

MAR Notice Number: 37-1048

Subject: Health Care Facilities

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 11, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024.

Notice of adoption for the rule must be published before June 22, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Implements HB 102. Allows all health care facilities to be eligible to seek accreditation from any accrediting entity approved by the U.S. Centers for Medicare & Medicaid Services and submit the accreditation survey and certification received by the health care facility from such accrediting entity for eligibility for licensure.

MAR Notice Number: 37-1051

Subject: Foster care support service rules

Date Notice Sent to Committee: January 2, 2024

Proposal Notice Publication Date: January 12, 2024

Public Hearing Date: February 2, 2024

Public Comment Due Date: February 9, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after February 11, 2024.

Notice of adoption for the rule must be published before July 12, 2024.

Link to text: The proposal notice available [here](#).

Brief description: Addresses budget changes to Child and Family Services Division in HB 2, which increased rates for diaper and respite allowances and combined clothing and transportation allowances into the overall foster care rate.

MAR Notice Number: 37-1055

Subject: Autism Grant Program

Date Notice Sent to Committee: January 2, 2024

Proposal Notice Publication Date: January 12, 2024

Public Hearing Date: February 1, 2024

Public Comment Due Date: February 9, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after February 11, 2024. Notice of adoption for the rule must be published before July 12, 2024.

Link to text: The proposal notice is available [here](#). The draft Autism Facilities Grant Manual is available [here](#).

Brief description: Implements HB 952. Adopts and incorporates into rule an Autism Facilities Grant Program manual

MAR Notice Number: 37-1056

Subject: Certificates of nonviable birth

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 12, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024. Notice of adoption for the rule must be published before June 22, 2024.

Link to text: The proposal notice is available [here](#).

Brief description: Implements HB 213 and adopts form required to be completed by parent to request issuance of a certificate of nonviable birth.

MAR Notice Number: 37-1061

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

Date Notice Sent to Committee: December 12, 2023

Proposal Notice Publication Date: December 22, 2023

Public Hearing Date: January 12, 2024

Public Comment Due Date: January 19, 2024

Possible Adoption and Effective Dates: The agency can adopt the rule after January 21, 2024. Notice of adoption for the rule must be published before June 22, 2024.

Link to text: The proposal notice is available [here](#). The proposed provide rates are available [here](#).

Brief Description: Implements provider rate increases for inpatient hospital services and prosthetic devices, durable medical equipment, and medical supplies.

ADOPTION NOTICES SINCE LAST INTERIM COMMITTEE MEETING

MAR Notice Number: 37-1029

Subject: Increase of Laboratory Fees

Date Notice Sent to Committee: August 29, 2023

Proposal Notice Publication Date: September 8, 2023

Public Hearing Date: September 28, 2023

Public Comment Due Date: October 6, 2023

Adoption Notice Provided to SOS: December 12, 2023

Adoption Notice Publication Date: December 22, 2023

Link to text: The proposal notice is available [here](#). The proposed fee schedule is available [here](#). The adoption notice is available [here](#).

Brief description: Increases fees charged for services of the Laboratory Services Bureau, which is primarily a service-funded operation. Fees have not been increased in 5 years and an increase is needed for the laboratory to maintain critical services.

MAR Notice Number: 37-1033

Subject: Chemical dependency programs and Medicaid mental health services

Date Notice Sent to Committee: July 11, 2023

Proposal Notice Publication Date: July 21, 2023

Public Hearing Date: August 11, 2023

Public Comment Due Date: August 18, 2023

Adoption Notice Provided to SOS: December 12, 2023

Adoption Notice Publication Date: December 22, 2023

Link to text: The proposal notice is available [here](#). The updated Behavioral Health and Developmental Disabilities (BHDD) manual is available [here](#). The adoption notice is available [here](#).

Brief description: Adopts and incorporates changes to the BHDD Medicaid and non-Medicaid manuals. These changes allow for the use of telehealth delivery for identified services, discretion related to staffing, and clarification of utilization review requirements for identified services.