



Children, Families, Health, and Human Services Interim Committee

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61th Montana Legislature

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TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: DPHHS Administrative Rule Activity
DATE: June 2, 2009

The Department of Public Health and Human Services has filed the following rule notices with the Secretary of State's Office for publication in the Montana Administrative Register (MAR):
(Notices in their entirety are available online at: <http://www.dphhs.mt.gov/legalresources/>)

Notices of Proposed Rules:

I.

MAR 2009 Issue No. 10 (May 28, 2009), MAR Notice 37-474, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of one rule pertaining to trailer courts and tourist campgrounds. A hearing will be held June 17, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until June 25, 2009. The department proposes to change the term "trailer" in ARM 37.111.230(1) to "dependent recreational vehicle." The existing rule requires general service campgrounds to provide service buildings with showers, toilets, and hand washing sinks within 300 feet of every campsite, even if individual hookups to water and sewer are provided at the site (for RVs). The proposed change would eliminate the need for these campgrounds to provide a general service building for independent recreational vehicle sites as, by definition, independent recreational vehicles have a toilet, sink, bathing facility, and a waste holding tank. The existing rule thus requires a duplication of services to campers in these self-contained units and adds an additional cost and decrease in aesthetic value to campgrounds under development or renovation.

TECHNICAL NOTE: The proposed rule was reviewed by committee staff and no technical problems were noted.

II.

MAR 2009 Issue No. 10 (May 28, 2009), MAR Notice 37-473, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed adoption of 27 new rules pertaining to behavioral health inpatient facilities (BHIFs). A hearing will be held June 19, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until June 25, 2009. The department is proposing the adoption of these rules to set forth the minimum licensing standards for behavioral health inpatient facilities (BHIFs) as required by SB 45, L. 2007. Section 53-21-194, MCA, enables the department to license BHIFs to provide inpatient psychiatric care to

persons involuntarily committed or detained under Title 53, MCA, or to persons seeking treatment voluntarily. A BHIF can provide treatment for up to 16 persons, over 18 years old, and will be licensed as a health care facility, but is not considered a hospital and therefore is not subject to EMTALA regulations. In addition to being required by statute, the rules are necessary to inform potential providers and recipients of BHIF services of the expectations necessary for licensure and address for patients various aspects of their treatment program and setting in which treatment will be received. The proposed rules address basic BHIF requirements for the application process, staffing requirements, policies and procedures, records, security, physical setting, and environmental considerations. The rules also address specific requirements more directly relating to the patient including assessments, treatment planning, restraints and seclusion, patient rights, quality assessment, discharge, and transfer to the state hospital. Of note: Individuals who will be served in a BHIF are now often seen in a hospital emergency room at considerable public expense. For those who require an inpatient level of care a BHIF provides a less expensive alternative for assessment of clinical needs because there is no transportation to and from the state hospital. A BHIF can also make referrals or utilize any appropriate available resources in the community. The department intends to apply these rules effective July 1, 2009.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted. Legal staff will be attending the hearing on June 19, 2009 and will report back to the committee.

III.

MAR 2009 Issue No. 10 (May 28, 2009), MAR Notice 37-472, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed adoption of one new rule, the amendment of 15 rules, and the repealing of two rules pertaining to home infusion therapy (HIT). A hearing will be held June 17, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until June 25, 2009. The proposed changes are necessary to reflect evolving changes in the home infusion therapy industry. Specifically, the word "agent" was added after "home infusion therapy" throughout the rules to clarify that the rules apply to home infusion therapy agencies and not the process of home infusion therapy which is a pharmacological process. Home infusion therapy services means the preparation, administration, or furnishing of parenteral (drugs injected through the skin) medications, or parenteral or enteral (drug administered by way of the intestine) nutritional services to an individual in the individual's residence. The agency must enter into a written contract with each party receiving services and the proposed rule changes clarify that process. Amendments to ARM 37.106.2405 state the requirements for all home infusion therapy agency personnel. Other proposed amendments enable the incorporation of policies and procedures for pharmacy and nursing, in addition to other services the agency may provide. Other suggested changes include a requirement for an annual report of improvements made as a result of a quality assessment program, specification of the educational requirements an agency must provide to patients, and clarification that it is the responsibility of the agency to establish and maintain a medical record for each patient. In addition, amendments to ARM 37.106.2415 propose that those administering medication within a home infusion therapy agency be licensed in Montana and ARM

37.106.2416 is being amended to require participating pharmacies to hold a Montana pharmacy license.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

IV.

MAR 2009 Issue No. 9 (May 14, 2009), MAR Notice 37-471, NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed adoption of 168 new rules, the amendment of 12 rules, and the repealing of 43 rules pertaining to swimming pools, spas, and other water features. A hearing will be held June 3, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until June 11, 2009. The department is repealing its existing swimming pool rules because they are outdated and no longer reflect industry standards. Most of the existing rules were adopted in 1985. Since 1985, the industry has begun to develop numerous new water features at water parks and in individual swimming pools available for public use, including such features as water slides, lazy rivers, and wave pools. Additionally, new designs, construction materials, disinfectants, circulation systems, etc. have been developed. The new rules are intended to update current industry standards and to address new features to ensure that public health and safety concerns are addressed in the design, construction, and operation of swimming pools, spas, and other water features. The department is also repealing old rules which addressed swimming areas in natural bodies of water. Because the Legislature has created new statutes addressing recreational uses of water, the department will no longer attempt to regulate natural recreational waters. All licensed pools, spas, or other water features will need to meet the operation requirements of the proposed rules upon their adoption, with the exception that currently licensed operations will have until January 1, 2011, for operators(s) to meet new certification requirements. The bill sponsor contact requirements of 2-4-302, MCA, apply to rules pertaining to raising fees for pool licenses and allowing for plan review fees by the department (HB 148, L. 2007, Rep. Grinde) and have been fulfilled.

TECHNICAL NOTE: The proposed rules (all 130 pages!) were skimmed by legal staff and no technical problems were noted. However, I will plan to attend the hearing on June 3 to determine if individuals in the pool industry have any issues with the proposed new rules.

V.

MAR 2009 Issue No. 9 (May 14, 2009), MAR Notice 37-470, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of seven rules pertaining to Temporary Assistance for Needy Families (TANF). A hearing will be held June 3, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period runs until June 11, 2009. The department is proposing several of these amendments to comply with definitions in the federal TANF Reauthorization law. ARM 37.78.206 has been updated to reflect changes in the TANF policy requiring individuals who are applying for TANF cash assistance who have been sanctioned twice to complete an intensive case management (ICM) within the first 30 days of

application. Failure to complete the ICM will result in denial of the application. ARM 37.78.220 has been updated to reflect federal policy that the five-year ban on TANF use for qualified aliens entering the U.S. does apply to American Indians with at least 50% American Indian blood who were born in Canada and ARM 37.78.401 has been updated to clarify existing policy that the senior benefit payments that are received by the Crow elders are excluded as a resource per P.L. 103-444, Crow Boundary Settlement Act of 1994. The rules are intended to be effective July 1, 2009.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

VI.

MAR 2009 Issue No. 8 (April 30, 2009), MAR Notice 37-469, NOTICE OF PROPOSED AMENDMENT -- the department has filed a NOTICE OF PROPOSED AMENDMENT in the matter of one rule pertaining to components of quality assessment activities. No public hearing is contemplated. The comment period ran until May 28, 2009. ARM 37.108.501 et. seq. were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using healthcare effectiveness data and information set (HEDIS) measures, nationally utilized measures updated annually. Since the HEDIS standards change somewhat every year, the rule must be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will be using the same updated measures. The department intends the proposed rule amendments to be applied retroactively to January 1, 2009.

TECHNICAL NOTE: The proposed rule was reviewed by committee staff and no technical problems were noted.

VII.

MAR 2009 Issue No. 8 (April 30, 2009), MAR Notice 37-468, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of four rules pertaining to Medicaid dental service providers' reimbursement rates. A hearing was held May 20, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until May 28, 2009. Montana Medicaid is a program administered by the department that pays for medical assistance to qualified low income and disabled Montana residents (providers are reimbursed on a fee for service basis). These rule amendments are necessary to give notice of Montana Medicaid's dental reimbursement rate for state fiscal year 2010, which is based on the state fiscal year 2010 and 2011 appropriations for dental services by the 61st Legislature (in HB2, \$64,348-state general fund; \$208,659 federal match). Rule amendments are also proposed to state Montana Medicaid's methodology for calculating the dental conversion factor. The department is not changing its method of calculating the dental conversion factor; it is stating its methodology in rule to comply with request for additional information by the Centers of Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid program.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

VIII.

MAR 2009 Issue No. 8 (April 30, 2009), MAR Notice 37-467, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of two rules pertaining to resource based relative value scale (RBRVS) Medicaid provider rates and mid-level practitioner's reimbursement for services to Medicaid clients under age 21. A hearing was held May 20, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until May 28, 2009. These rule amendments are necessary to give notice of the reimbursement rate changes for state fiscal year 2010 based on the 61st Legislature's appropriations (in HB2, \$251,049-state general fund; \$814,072- federal match) and the department's estimates of service utilization during the appropriation period. ARM 37.85.212 provides the reimbursement for specified provider types: physician services-conversion factor-\$38.43; allied services-conversion factor-\$30.49; mental health services-conversion factor-\$25.95; and anesthesia services-conversion factor-\$26.25. The proposed amendments of the calculation of the four conversion factors is not a change in the method of calculating rates. Instead the department is stating the detail in rule to comply with recent requests for additional information by CMS. The department intends these rules to be effective July 1, 2009.

TECHNICAL NOTE: The proposed rules were reviewed by committee staff and no technical problems were noted.

IX.

MAR 2009 Issue No. 7 (April 16, 2009), MAR Notice 37-466, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the department has filed a NOTICE OF PUBLIC HEARING in the matter of the proposed amendment of one rule pertaining to Vocational Rehabilitation Program payment for services. A hearing was held May 6, 2009, in the DPHHS Auditorium, 111 N. Sanders, Helena, Montana. The comment period ran until May 14, 2009. The rule proposed to be amended sets forth the criteria allowing the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule. The proposed amendment changes the reference to the U.S. Department of Health and Human Services poverty guidelines for households from 2008 to 2009 which assures the continuation of the appropriate coverage population.

TECHNICAL NOTE: The proposed rule was reviewed by committee staff and no technical problems were noted.

Notices of Adopted Rules:

X.

MAR 2009 Issue No. 4 (February 26, 2009), MAR Notice No. 37-465, NOTICE OF

AMENDMENT -- no public hearing was held with regard to the proposed amendment of one rule pertaining to Psychiatric Residential Treatment Facility (PRTF) services, reimbursement. No comments or testimony were received. The department is following directives from CMS stating that the Social Security Act prevents federal financial participation in services to youth residing in residential treatment facilities that are institutions for mental diseases (IMDs). This means that PRTFs enrolled in Montana Medicaid are responsible to provide (directly or indirectly) all services youth need while in their facility. All needed services, psychiatric, medical, or ancillary, are included in the PRTF's reimbursement rate. Without reimbursing out-of-state PRTFs their cost for these services, Montana youth would likely not receive these services and youth could also lose access to out-of-state PRTFs.

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