



## Children, Families, Health, and Human Services Interim Committee

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### 64th Montana Legislature

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December 30, 2015

To: Children, Families, Health, and Human Services Interim Committee  
From: Alexis Sandru, Staff Attorney  
Re: ARM Review -- Compilation of E-mail Summaries -- MAR Issues 21 through 24

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 (DPHHS) and the entities attached to DPHHS for administrative purposes for compliance with the Montana Administrative Procedure Act (MAPA). At its June 2015 meeting, the Committee elected to receive biweekly e-mails from staff, which summarize DPHHS rule activity and any issues noted in rule review. This paper is a compilation of those summaries that were prepared since the Committee's November meeting.

#### **The Department has proposed the following:**

##### **MAR Notice Number: 37-733**

**Subject:** Update of Medicaid hospice reimbursement fee schedules

**Summary:** The Department is proposing to update its Medicaid hospice reimbursement fee schedule in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicaid and Medicaid Services, effective October 1, 2015. The proposed fee schedule implements an aggregate reimbursement rate increase of 1% (\$50,000), which will apply to 54 of Montana's 56 counties. Two counties will experience a rate decrease of 0.5% to 1%. The Department intends to apply the rate increase retroactively to October 1. Any rate decrease will not be applied retroactively.

**Notes/Hearing:** A public hearing was held on December 2, 2015.

##### **MAR Notice Number: 37-734**

**Subject:** Big Sky Rx maximum premiums

**Summary:** The Department is proposing to change the Big Sky Rx premium benefit from \$30 to \$30.90 in order to match the Low Income Subsidy for Medicare Part D for this region as set forth by CMS in July 2015. This would result in a yearly benefit increase of \$46,839.

**Notes/Hearing:** A public hearing was held on December 2, 2015.

##### **MAR Notice Number: 37-735**

**Subject:** Update of effective dates of direct care and ancillary services workers' additional payments/reporting

**Summary:** The Department is proposing to update the effective date from January 1, 2015, to

January 1, 2016, for direct care and ancillary services workers' additional payments and reporting requirements.

Notes/Hearing: No public hearing was scheduled.

**The Department has amended the following (amendment notes in italics):**

**MAR Notice Number:** 37-728

Subject: Effective dates of Medicaid provider fee schedules

Summary: The Department is proposing to update effective dates to January 1, 2016, for certain Medicaid provider fee schedules that use Medicare pricing for procedure codes, which Medicare updates in January of each year. The Department is proposing to add two new dental procedure codes for adults that were recommended by the Montana Dental Association and that are evidence-based in the prevention of dental caries. The Department also has determined that it is overpaying for incontinence supplies and is proposing to change to a set rate fee schedule that uses an average of the Idaho and Wyoming fee schedules. As required under 53-6-196, MCA, the Department has determined that the proposed dental procedure codes and method of payment for incontinence supplies can be measured by performance-based measures and will be measured by looking at expenditures in the year after adoption of the proposed changes and the year prior to the adoption of the proposed changes. The Department expects to see savings in the amount of funds paid for dental caries treatment and incontinence supplies.

Notes/Hearing: A public hearing was held on November 19, 2015.

*Amended Proposal Notice Notes:* The Department has amended the proposal notice to update the fiscal impact and statement of reasonable necessity and has indicated that the proposed amendment may directly impact small businesses. The Department anticipates that the Medicare durable medical equipment, prosthetics, orthotics, and supplies fee schedules will have a direct impact on businesses that dispense prescribed durable medical equipment and that reimbursement to these businesses will be reduced by approximately \$1,648,907 in total funds. The Department anticipates that businesses that dispense prescribed incontinence supplies will experience a reduction of \$848,917 in total funds.

**The Department has adopted the following (adoption notice notes in italics):**

**MAR Notice Number:** 37-698

Subject: Low Income Energy Assistance Program (LIEAP) Amendments for 2014-2015 and 2015-2016 Heating Seasons

Summary: The Department is proposing multiple amendments to the Low Income Energy Assistance Program (LIEAP), which is a federally funded program that provides assistance to low-income households in paying for home heating costs. While many of the amendments are "housekeeping amendments", some the more substantive amendments include the following:

- change the benefit paid to residents of publicly subsidized housing from a single payment of \$50 for a period of 5 years to a "modified benefit", which is an amount equal to 5% of the amount of a regular LIEP benefit or a payment of \$25, whichever is greater, each year for a 5-year period;

- no longer require photo identification in processing applications if the social security number is verified and accept a birth certificate as proof of identify for individuals under 18 whose SSN cannot be verified;
- change the last day to submit LIEAP benefit receipts to June 20 (ARM currently requires that receipts be submitted within 45 days of the end of heating season or by June 25 if the Department extended the heating season beyond April 30);
- require that a person must be 18 years of age or older in order to file an LIEAP application, unless the person is an emancipated minor; and
- exclude out-of-pocket health insurance premiums from countable income when calculating a household's poverty level.

Notes/Hearing: A public hearing was held on November 4, 2015.

*Adoption Notice Notes:* No public comment was received. The Department amended the rules as proposed and intends to apply the amendments retroactively to October 1, 2015.

**MAR Notice Number:** 37-712

Subject: Update of annual poverty guidelines for Montana Telecommunications Access Program (MTAP)

Summary: The Department is proposing to revise the maximum level of allowable income under MTAP by substituting the 2015 United States Department of Health and Human Services poverty guidelines for households for the 2014 guidelines that are currently in place.

Notes/Hearing: No public hearing was held.

*Adoption Notice Notes:* No public comment was received. The Department amended the rules as proposed and intends to apply the amendments retroactively to February 3, 2015.

**MAR Notice Number:** 37-715

Subject: Provider participation, program requirements, and reimbursement procedures for psychiatric residential treatment facility (PRTF) services

Summary: The Department is proposing the following:

- adopt a new rule concerning reimbursement requirements for out-of-state PRTF providers;
- amend existing rules for housekeeping/improved rule writing, refer to the most current federal guidelines that govern PRTF services under Medicaid, incorporate certain regulations, program policies, and procedures into the Children's Mental Health Bureau Medicaid Services Manual; and
- repeal ARM 37.87.1210 (service requirements for out-of-state PRTFs) and 37.87.1214 (substance abuse disorder assessment and treatment).

Notes/Hearing: A public hearing was held on August 19, 2015. \*\*This proposal notice triggers the requirements of SB 336 (2015), which requires the Department to include a determination of whether the rationale behind a rule involving the delivery of Medicaid services can be measured using performance-based measures and, if so, the period over which the outcomes will be measured. The proposal notice did not include this determination, so I contacted the Department regarding this omission. The Department will be publishing an amended proposal notice to correct this omission.

*Amended Proposal Notice Notes:* The Department is amending the proposal notice to comply with the requirements of SB 336 (now codified as 53-6-196, MCA). The Department has determined that the principal reasons and rationale for the proposed rule cannot be assessed by performance-based measurements. The public comment period was extended to September 4, 2015.

*Adoption Notice Notes:* No public comment was received. The Department adopted, amended, and repealed the rules as proposed and intends to apply the changes retroactively to October 1, 2015.

**MAR Notice Number:** 37-721

Subject: Update of federal poverty guidelines for Children's Special Health Services

Summary: The Department is proposing to update the federal poverty guidelines for Children's Special Health Services from 2014 guidelines to 2015 guidelines (250% to 261%).

Notes/Hearing: A public hearing was not scheduled.

*Adoption Notice Notes:* No public comment was received. The Department has amended the rules as proposed and intends to apply the changes retroactively to April 1, 2015.

**MAR Notice Number:** 37-724

Subject: Compliance with International Classification of Disease, Tenth Edition (ICD-10-CM)

Summary: The Department is proposing to amend rules pertaining to eligibility requirements and reimbursement procedures for adult Medicaid mental health services, including:

- implement ICD-10 requirements that are mandated by CMS; and
- incorporate a new definition of severe disabling mental illness using the ICD-10-CM diagnoses (eliminate medical and physical conditions such as amnesic disorder, disorders due to medical conditions, and pervasive developmental disorder; replace mood disorder diagnosis codes with depressive disorders; broaden schizophrenia, schizophrenia spectrum, and other psychotic disorders; and add borderline personality disorder and autism spectrum disorder).

The Department believes that while the ICD-10-CM and new diagnoses could increase the number of individuals determined to have a severe disabling mental illness, the potential increase in expenditures is not expected to be substantial.

Notes/Hearing: A public hearing was held October 14, 2015. \*\*Erroneous authority and implementation cites -- agency rule reviewer contacted.

*Adoption Notice Notes:* The Department received 17+ comments and amended the rules as proposed, with the following changes:

- clarified the definition of severe disabling mental illness in response to numerous comments received; and
- eliminated the cap on outpatient sessions and prior authorization requirements.

The Department intends to apply the amendments retroactively to October 1, 2015.

**MAR Notice Number:** 37-725

Subject: Addition of lactation services to Medicaid outpatient hospital services

Summary: The Department is proposing to add lactation services to Medicaid outpatient hospital services. The Department defines lactation services as "support through breastfeeding education and consultations with certified lactation providers to increase the health of both mother and baby".

Notes/Hearing: A public hearing was held on November 4, 2015. \*\*The statement of reasonable necessity was incomplete and erroneous citations were included as implementing statutes. The agency rule reviewer was contacted. I anticipate that the errors will be remedied in an amended proposal notice.

*Amended Proposal Notice Notes:* The Department is amending the statement of reasonable necessity to include reasons why the Department is adding lactation services as an outpatient hospital service, mainly because evidence indicates that lactation support will decrease health risks for children and mothers and provide savings in women's health care expenses and formula costs. The Department has also determined that the addition of lactation services is appropriate for performance-based measurements, as required under 53-6-196, MCA. The Department plans to measure the outcomes related to the addition of lactation services by considering:

- the number of Medicaid women who receive outpatient lactation services annually;
- the number of breast pump rentals for members annually;
- comparing 2016 breastfeeding rates to the 2014 Breastfeeding Report Card by the CDC; and
- comparing the 2015 and 2016 WIC and SNAP formula expenditures for any county in which lactation services are provided.

The public comment period was extended to November 19, 2015.

*Adoption Notice Notes:* The Department received 8+ comments and amended the rules as proposed, with the following changes:

- eliminated requirement that lactation services be provided by a certified baby friendly hospital in response to comments received; and
- corrected citations to statutory authority.

**MAR Notice Number:** 37-727

Subject: Update of Physician-Related Services Provider Manual

Summary: The Department is proposing the following updates to the Medicaid Physician-Related Services Provider Manual:

- reorganize manual and improve style;
- clarify that persons who become retroactively eligible for Medicaid may be accepted by providers as Medicaid members from the current date or the date when retroactive eligibility was effective;
- clarify that Native Americans who have been treated at an IHS or tribal or urban facility are exempt from member cost sharing;
- clarify how to report anesthesia procedures and how to correctly bill for those services; and
- clarify billing dates for obstetrical services.

Notes/Hearing: A public hearing was held on November 4, 2015.

*Adoption Notice Notes:* No public comment was received. The Department has adopted the amendments as proposed and intends to apply the amendments retroactively to October 1, 2015.

**MAR Notice Number:** 37-729

Subject: Healthy Montana Kids/CHIP dental benefits and evidence of coverage

Summary: The Centers for Medicare and Medicaid Services (CMS) approved the Montana Medicaid state plan, requiring the HMK/CHIP program to adopt an operational benchmark for its HMK dental program, such as the State of Montana employee dental benefit plan. The Department is proposing to follow the employee dental benefit plan and is amending rules accordingly. The Department is also proposing to include folic acid as a covered over-the-counter medication on the basis that folic acid supplementation for expectant mothers prevents 69% of fetal neural tube defects and is already covered as a prescription drug.

Notes/Hearing: A public hearing was held on November 18, 2015.

*Adoption Notice Notes:* The Department received 7+ comments and amended the rules as proposed. The amendments are effective January 1, 2016.

**MAR Notice Number:** 37-730

Subject: New rules implementing the HELP Act

Summary: The Department is proposing the following 10 new rules to implement the HELP Act. The rules include:

- a purpose section;
- a definitions section;
- a section setting forth who is eligible for coverage under the HELP Program;
- a benefits plan section, which provides that coverage for services is provided through a third-party administrator (TPA) benefits plan; sets forth exceptions to this requirement; adopts and incorporates by reference the HELP Program Evidence of Coverage (describing health benefits under the program); and exempts services that are not covered, not reimbursable, not medically necessary, experimental, unproven, or performed in an inappropriate setting;
- a section setting modified adjusted gross income as the measure of income for participants;
- a section regarding premiums (similar to statutory language);
- a section on copayments, which caps the total amount of copayments made in a benefit year at 3% of the participant's annual income; provides services for which copayments may not be charged; exempts certain individuals from copayments; caps the total amount of premiums and copayments at 5% of the annual family household income; and provides that providers may not charge for exempted services unless the participant signs an advance benefit notice prior to receiving the service;
- a section on reimbursement, specifying which services are reimbursable directly through the TPA or the Department;
- a section setting forth requirements for providers who want to participate in the HELP Program; and

- a grievance and appeal section, which allows an applicant or participant in the HELP Program who is aggrieved by an eligibility or benefits decision to request a fair hearing. The Department has determined that the proposed changes are appropriate for performance-based measurements and has formulated a matrix describing the measurements, which is available by viewing the proposal notice.

Notes/Hearing: These rules will not go into effect unless the HELP Act goes into effect, which requires CMS approval of the state waiver request (CMS approved the waiver on November 2, 2015). A public hearing was held on November 18, 2015.

*Adoption Notice Notes:* The Department received 44+ comments and adopted the rules as proposed, with multiple changes, such as:

- exempted individuals with incomes up to 50% of the federal poverty level from premium or cost-sharing obligations;
- provided that HELP Plan participants will receive a credit in the amount of their premium obligation towards the first copayments accrued up to 2% of the household income;
- set forth specific copayment amounts in rule;
- provided that copayments are subject to a quarterly aggregate cap of one-fourth of 3% of the annual household income; and
- deleted references to certain services and individuals exempt from copayments.

The rules are effective January 1, 2016.

**MAR Notice Number:** 37-731

Subject: State reimbursement rate for health care services provided to individuals in the care or custody of the Department of Corrections or DPHHS

Summary: The Department is proposing rules that would implement a section of the HELP Act (now codified as 53-6-1312, MCA) that set the Medicaid rate as the amount that the State will pay for individuals who are in the custody of the Department of Corrections or who are residents, by commitment or otherwise, at the Montana State Hospital, the Montana Mental Health Nursing Care Center, the Montana Chemical Dependency Center, or the Montana Developmental Center.

The proposed rules:

- provide that the state will process these claims through the Department's Medicaid claims processing agent;
- require a provider to enroll in Medicaid and accept the Medicaid rate as reimbursement in full;
- set forth provider requirements generally applicable to Medicaid providers in order to establish a consistent method for coding and processing claims;
- provides an administrative review process for claims disputes; and
- do not impose cost-sharing requirements. The Department determined that the administrative costs of attempting to collect cost-sharing payments from individuals in the care or custody of the state outweigh any benefits of a cost-sharing program.

Notes/Hearing: These rules will not go into effect unless the HELP Act goes into effect, which requires CMS approval of the state waiver request (CMS approved the waiver on November 2, 2015). A public hearing was held on November 19, 2015. \*\*The purpose section of the

proposed rules does not mirror statutory language. I contacted the agency rule reviewer and believe this discrepancy will be resolved.

*Adoption Notice Notes:* The Department received two comments and adopted the rules as proposed, with the following changes:

- clarified the purpose section to mirror statutory language; and
- clarified that cost-sharing requirements under the HELP Act do not apply to individuals who are in the custody of the Department of Corrections or who are residents, by commitment or otherwise, at the Montana State Hospital, the Montana Mental Health Nursing Care Center, the Montana Chemical Dependency Center, or the Montana Developmental Center.

The rules are effective January 1, 2016.

**MAR Notice Number:** 37-732

Subject: Establishment of annual payment limit for dental services provided through Medicaid

Summary: In order to control dental costs, the Department is proposing to establish an annual limit of \$1,125/benefit year for restorative dental services, which include crowns and extractions. Diagnostic and preventative services will remain uncapped. The Department has determined that the proposed rulemaking is appropriate for performance-based measurement and, over a 12-month period, will track the number of members whose dental benefit is capped to determine the number of individuals who are adversely affected by the cap.

Notes/Hearing: A public hearing was held on November 18, 2015.

*Adoption Notice Notes:* The Department received 5+ comments and amended the rule as proposed, with the following changes:

- excluded aged, blind, and disabled individuals from the dental benefit cap; and
- excluded anesthesia services from the dental benefit cap.

The amendment is effective January 1, 2016.

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