



Children, Families, Health, and Human Services Interim Committee

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68th Montana Legislature

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July 11, 2023

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Maddie Krezowski, Staff Attorney
RE: Administrative Rule Report – July 11, 2023

This report summarizes administrative rules proposed or soon to be proposed by the Department of Public Health and Human Services (DPHHS), and rules adopted by DPHHS after the Legislature adjourned on May 2, 2023. Current rule notices are available at www.mtrules.org (search by notice number in the bottom right-hand search box, i.e., 37-1028). Upcoming notices that have not yet been published are attached to this email.

UPCOMING NOTICES *(To be published in the MAR on July 21, 2023)*

Upcoming Proposal Notices

MAR Notice Number: 37-1033

Subject: Chemical dependency programs and Medicaid mental health services

Proposal Notice to be Published: July 21, 2023

Summary: The Department is proposing permanent updates to allow telehealth delivery of identified services, discretion related to staffing, and clarification of utilization requirements for identified services. The Department proposes to adopt updated versions of the Behavioral Health and Developmental Disabilities (BHDD) Medicaid and non-Medicaid manuals to effectuate these changes. The updated manuals will be available at <https://dphhs.mt.gov/bhdd/>. The proposed effective date for the updated manuals is May 12, 2023.

Notes/Hearing: A public hearing is scheduled for August 11, 2023. Public comment is due August 18, 2023.

MAR Notice Number: 37-1036

Subject: Developmental Disabilities Program Reimbursement for Services

Proposal Notice to be Published: July 21, 2023

Summary: The Department is proposing to amend ARM 37.34.3005 to incorporate updates to the Montana Disabilities Program Services Manual. The changes in the manual pertain to reimbursement rates for the Montana Disabilities Program Services and to changes to conform

the manual to Developmental Disabilities 0208 Comprehensive Waiver approved by CMS as part of the waiver's routine five-year renewal process.

- *Reimbursement rates:* The Department is proposing to apply funding appropriated by the 2023 legislature across all studied rates in the Developmental Disabilities Home and Community-Based Service Waiver Program using the methodology recommended by Guidehouse. The methodology will increase rates by a percentage of the difference between current rates and benchmark rates. The Department will fund about 70% of the gap between the current rate and the benchmark rate, bringing rates up to 94% of the Guidehouse benchmark effective July 1, 2023. This results in an increase of approximately 18%. The specific rate increase for each service is dependent upon the difference between the current rate and the benchmark rate. The proposed rates can be found on pages 63-65 of the draft Developmental Disabilities Program Services Manual. The updated manual will be available at: <https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf>.
- *Additional changes:* The updated manual adds telehealth language to services eligible for telehealth; adds legally responsible individuals as allowable paid caregivers; updates definitions to be consistent with the CMS-approved 0208 waiver; adds transportation language to services eligible for transportation in the legislatively approved rates; adds additional tiers for BSS service to be consistent with CMS-approved 0208 waiver; adds prorating language; and adds retainer payments for certain services to be consistent with CMS-approved 0208 waiver.

The Department intends the proposed rule amendments to apply retroactively to July 1, 2023.

Notes/Hearing: A public hearing is scheduled for August 10, 2023. Public comment is due August 18, 2023.

CURRENT PROPOSAL NOTICES

MAR Notice Number: 37-1017

Subject: Emergency Medical Services

Proposal Notice Published: July 7, 2023

Summary: The Department proposes this rulemaking to update, consolidate, simplify, and make more user friendly, the administrative rules governing licensure of emergency medical service providers. The proposed rulemaking repeals the existing 43 rules governing emergency medical services and adopts 14 new rules in their place and incorporates and adopts by reference a new Emergency Medical Services Appendix. The appendix will be electronically available at:

<https://dphhs.mt.gov/publichealth/EMSTS/ems/resources>.

Notes/Hearing: A public hearing is scheduled for July 31, 2023. Public comment is due August 4, 2023.

Link: The proposal notice is available [here](#). The proposed appendix is available [here](#).

MAR Notice Number: 37-1035

Subject: Medicaid Home and Community Based Services Program

Proposal Notice Published: July 7, 2023

Summary: The Department proposes this rulemaking to amend ARM 37-34-907, which pertains to the selection and entry in the Home and Community Based Services (HCBS) Waiver. The

proposed amendment allows persons on the HCBS Waiver waiting list who are at risk of institutionalization due to the insufficiency of non-waiver services, an emergency reserved capacity slot. The threat of institutionalization meets the emergency criteria approved by the Center for Medicare & Medicaid Services (CMS) on April 21, 2022.

Notes/Hearing: A public hearing is scheduled for July 27, 2023. Public comment is due August 4, 2023.

Link: The proposed notice is available [here](#).

MAR Notice Number: 37-1037

Subject: Updating Medicaid and Non-Medicaid Provider rates, fee schedules, and effective dates
Proposal Notice Published: July 7, 2023

Summary: The Department is proposing to amend ARM 37.69.326, 37.85.104, 37.85.105, 37.85.106, and 37.86.3607 to update Medicaid and non-Medicaid provider rates, fee schedules, and effective dates. When the notice is published in the MAR, proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, should be available at <https://medicaidprovider.mt.gov/proposedfs>

In brief, the Department proposes

- for the four areas studied by Guidehouse during the 2021-22 interim (Adult Behavioral Health, Children’s Mental Health, Developmental Disabilities, and Senior and Long Term Care programs), to increase rates by funding about 70% of the “gap” between the current rate and the Guidehouse benchmark rate and bring these rates up to an average of 94% of the Guidehouse benchmark, effective July 1, 2023. This will result in an increase in funding of approximately 18%, effective July 1, 2023. The specific rate increase for each service is dependent upon the difference between the current rate and the Guidehouse benchmark rate.
- a weighted average rate increase of 4% for provider rates not studied by Guidehouse.
- to add mobile crisis services for both the Medicaid and non-Medicaid programs
- to remove outdated references to the department’s physical address but to maintain links to the agency’s website as the method for obtaining or viewing fee schedules and manuals adopted by reference in the rules
- to update the HMK Dental fee schedule to align with the state employee benchmark plan
- to adopt the Resource-Based Relative Value Scale (RBRVS) contained in the Medicare Physician Fee Schedule adopted by CMS in the November 18, 2022 Federal Register and update applicable conversion factors to result in a weighted average rate increase of 4% for allied services and mental health services
- to set the payment-to-charge ratio to 46.8%, effective July 1, 2023
- to change the optometric services provider rate of reimbursement to 115.50% of the reimbursement for allied services with an effective date of July 1, 2023, which is a weighted average provider rate increase of 4%, consistent with the weighted average rate increase for providers not included in the Guidehouse study
- to adopt the Outpatient Prospective Payment System (OPPS) fee schedule published by CMS in the November 23, 2022, Federal Register
- to increase the OPPS conversion factor to \$58.39, effective July 1, 2023
- to update the Medicaid statewide cost-to-charge ratio to 48.95%
- to increase the bundled composite rate for outpatient maintenance dialysis clinics by 4% to \$271.02 effective July 1, 2023

- to adopt fee schedules effective July 1, 2023 to incorporate changes due to the proposed amendments in this notice, including federal register changes, conversion factor update, and legislatively required provide rate increases
- to update the dental approved provider rates, dental procedure codes, and dental provider manual
- to update the outpatient drugs dispensing minimum fee to \$5.11 and increase the maximum dispensing fee to the legislatively approved provide rate increase
- to increase the fee paid for each additional vaccine administered to \$18.65 to align with the physician services rate
- to adopt and incorporate by reference the Medicare Region D Supplier Manual effective July 1, 2023 and revise the effective date for the durable medical equipment fee schedule to July 1, 2023
- to adopt updated fee schedules for senior long term care effective July 1, 2023
- to adopt updated fee schedules for behavioral health and developmental disabilities division effective July 1, 2023
- to update the Medicaid youth mental health services fee schedule to incorporate legislatively approved provider rate increase and change effective date to July 1, 2023
- to update the effective date of the Medicaid Behavioral Health Targeted Case Management Fee Schedule to July 1, 2023
- to increase provider rates for Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based Comprehensive Waiver for Eligible Individuals Age 16 and over by adopting and incorporating an updated version of the manual dated July 1, 2023
- to amend 37.87.1226(1) to align in-state and out-of-state reimbursement rates for psychiatric residential treatment facility services

Notes/Hearing: A public hearing is scheduled for July 27, 2023. Public comment is due August 4, 2023.

Link: The proposed notice is available [here](#). Proposed fee schedules are available [here](#).

MAR Notice Number: 37-1038

Subject: Nursing Facility Reimbursement

Proposal Notice Published: July 7, 2023

Summary: The Department proposes to set the flat rate component for Medicaid nursing facility reimbursement at \$257.54 for SFY 2024, which equates to a 23.02% rate increase from SFY 2023. The Department intends to retroactively apply the amendment to July 1, 2023.

Notes/Hearing: A public hearing is scheduled for July 31, 2023. Public comment is due August 4, 2023.

Link: The proposed notice is available [here](#). Proposed fee schedules are available [here](#).

MAR Notice Number: 37-1028

Subject: Applied Behavior Analysis Services

Proposal Notice Published: May 26, 2023

Summary: DPHHS is proposing to amend ARM 37.34.1902 to expand the list of persons who are eligible to establish a qualifying diagnosis for the continuation of ABA services after an initial 180 days of allowed services and to adopt and incorporate into rule updates to the department’s Applied Behavior Analysis (ABA) Manual (available at

<https://medicaidprovider.mt.gov/manuals/appliedbehavioranalysisisservicesmanual>) dated July 1, 2023.

Notes/Hearing: A public hearing was held June 15, 2023. Public comment was due June 23, 2023.

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

RECENT ADOPTION NOTICES

MAR Notice Number: 37-1030

Subject: Hospice Reimbursement

Summary: The department proposed to amend ARM 37-40-802 to update references to the federal regulations to the most current version of the Code of Federal Regulations and to amend ARM 37.40.830 to update the Medicaid hospice reimbursement fee schedule reference to the rate set by the Centers for Medicare & Medicaid Services (CMS) in the Federal Register effective October 1, 2022.

Notes/Hearing: A public hearing was held June 15, 2023. Public comment was due June 23, 2023.

Adoption Notice Notes: The Department received no public comment and amended the rules as proposed. The Department intends the rate increase to apply retroactively to October 1, 2022. Any rate decrease will be effective after the publication of the adoption notice.

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

MAR Notice Number: 37-1006

Subject: Low-Income Home Energy Assistance Program (LIHEAP)

Summary: The department proposed to change all references to the Low Income Energy Assistance Program (LIEAP) to the Low Income Home Energy Assistance Program (LIHEAP), to update the benefit award matrix for use during the 2022-2023 heating season, to amend eligibility related household income assessments; to use 2022-2023 poverty guidelines for eligibility determinations and other changes to adjust for inflation; and small grammatical and organizational changes throughout for clarification.

Notes/Hearing: The Department held a hearing on April 13, 2023. Public comment was due April 21, 2023.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed. The Department intends to apply the amendments retroactively to October 1, 2022.

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

MAR Notice Number: 37-1011

Subject: Food Distribution Program on Indian Reservations

Summary: The Department proposed amendments to reflect Federal Fiscal Year 2023 regulations, policies, and practices, update the name of the program, and amend eligibility recertification timelines.

Notes/Hearing: The Department held a hearing on April 13, 2023. Public comment was due April 21, 2023.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed on May 16, 2023. Published in the MAR May 26, 2023.

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

MAR Notice Number: 37-1023

Subject: Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates

Summary: The Department proposed to update the fee schedule date for prosthetic devices, durable medical equipment, and medical supplies from January 1, 2023, to April 1, 2023 to ensure the Department can implement CMS quarterly updates for these services.

Notes/Hearing: The Department held a hearing on April 14, 2023. Public comment was due April 21, 2023.

Adoption Notice Notes: The Department received no public comment and adopted the rulemaking as proposed on May 16, 2023. Published in the MAR May 26, 2023.

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