



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

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

### 60th Montana Legislature

#### SENATE MEMBERS

CAROL JUNEAU  
RICK LAIBLE  
TERRY MURPHY  
DAN WEINBERG

#### HOUSE MEMBERS

EDITH CLARK  
ERNIE DUTTON  
TERESA HENRY  
DIANE SANDS

#### COMMITTEE STAFF

SUE O'CONNELL, Lead Staff  
LISA JACKSON, Staff Attorney  
FONG HOM, Secretary

TO: Committee members  
FROM: Lisa Mecklenberg Jackson, Staff Attorney  
RE: Administrative Rule Activity  
DATE: September 13, 2007

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):  
*(All notices are available online at:  
<http://www.dphhs.mt.gov/legalresources/recentlyadoptedrules/index.shtml>)*

#### Notices of Adopted Rules:

##### I.

MAR 2007 Issue No. 17 (September 6, 2007), MAR Notice No. 37-402, NOTICE OF AMENDMENT -- a public hearing was held May 2, 2007 to consider amendments to rules pertaining to the resource based relative value scale (RBRVS). No one appeared at the hearing to testify and no written comments were received. The rules relate to Medicaid reimbursement. The Montana Medicaid program pays enrolled providers for services to eligible individuals. The purpose of the rule amendment was to update the Resource Based Relative Value Scale (RBVS) fees paid to enrolled providers in accordance with the most recently published relative value units (RVUs) released by the Centers for Medicare and Medicaid Services (CMS). The Department intends the amendments to be effective October 1, 2007. The Department adopted the rules as proposed.

##### II.

MAR 2007 Issue No. 16 (August 23, 2007), MAR Notice No. 37-407, NOTICE OF AMENDMENT -- a public hearing was held June 21, 2007 to consider amendments to rules pertaining to the case management services for youth with serious emotional disturbance. The Department proposes to make the definitions in the rules and service coverage for targeted case management (TCM) for seriously emotionally disturbed youth consistent with the core functions currently billable under Medicaid. As defined by the U.S. Dept. of Health and Human Services Centers for Medicare and Medicaid Services (CMS), these functions include assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. The Department is proposing that TCM be added to the list of services that require prior authorization. TCM services would be subject to prior authorization after a client received 60 units of service in a state fiscal year. The Department is proposing amendments to the definition of "serious emotional disturbance," the definition and function of "targeted case management," and the certificate of need requirement for residential psychiatric care to be consistent with federal standards. The Department is also proposing to change the requirement that a youth needs to

have a serious emotional disturbance for the first 24 individual and family outpatient sessions in a state fiscal year; the youth only need have a mental health diagnosis designated by the Department. To receive additional individual and family outpatient therapy services, the youth would need to have a serious emotional disturbance. This change is being proposed to intervene earlier and allow for the treatment of milder mental health diagnoses. The rationale for the proposed amendments to the rules is that they are intended primarily to allow improved treatment management of children with serious emotional disorders through utilization review of children's targeted case management. The Department amended ARM 37.86.3705, 37.88.901, 37.88.1116, and 37.89.103 as proposed. The Department amended ARM 37.86.3701, 37.86.3702, and 37.88.101 with minor changes from the original proposal. The Department responded to 47 comments on these rules and made several changes as a result of the comments.

TECHNICAL NOTE: The Department also amended ARM 37.86.3706 which was not in the original notice. Because this was a "housekeeping" change (just moving the substance of a proposed rule amendment in the original notice to a different rule), the notice does not have to be re-issued, but the Department should have included the new rule number in the caption of the notice, which it did not. The Department was notified of the error and will reissue a new cover page.

### III.

MAR 2007 Issue No. 15 (August 9, 2007), MAR Notice No. 37-408, NOTICE OF AMENDMENT -- a public hearing was held July 11, 2007 to consider amendments to three rules pertaining to medicaid nursing facility reimbursement. One written comment was received supporting the rule change. The amendments implement funding for nursing facility reimbursement appropriated for state fiscal year, commencing July 1, 2007. Funding from the health and Medicaid initiatives account in the state special revenue fund (\$3,544,542) provide for a 2.5% rate increase for nursing facility providers and funds in the general fund (\$5,107,142 approved by the Legislature) provide funding for a direct care worker wage increase to raise Certified Nurse Aide direct care worker wage and related benefits to \$8.50 an hour. Any remaining funds may be used only to raise wages and related benefits up to \$0.70 an hour for all direct care workers and other low-paid staff. The Department adopted the rules as proposed.

### IV.

MAR 2007 Issue No. 13 (July 5, 2007), MAR Notice No. 37-406, NOTICE OF ADOPTION AND AMENDMENT -- a public hearing was held June 13, 2007 to consider amendments to rules pertaining to the disease management program. No one appeared at the hearing to testify and no written comments were received. The rules establish criteria for determining chronic diseases managed under the disease management program and incorporate changes to Montana's Medicaid disease (DM) program called Nurse First. The amendments delete the list of chronic medical conditions (asthma, diabetes, congestive heart failure, chronic pain, and cancer) and add language stating the criteria Medicaid will use to determine which conditions and age groups are selected for DM program management. The rule amendments also add qualified individual program (QI) clients to the list of Medicaid clients excluded from the program, as well as dual eligibility clients (Medicare and Medicaid). The Department adopted the rules as proposed.

V.

MAR 2007 Issue No. 13 (July 5, 2007), MAR Notice No. 37-405, NOTICE OF AMENDMENT -- a public hearing was held May 30, 2007 to consider amendments to rules pertaining to Temporary Assistance for Needy Families (TANF). The amendments seek to bring the Montana rules into compliance with the federal TANF Reauthorization regulations. Specifically, the amendments provide that individuals who are incarcerated will no longer be eligible for assistance as these individuals are not able to participate in allowable work activities as required by the TANF Reauthorization regulations. The Department responded to one comment regarding individuals who request a fair hearing to dispute a sanction and who receive an overpayment pending the hearing. Under the rule change, these individuals are subject to recovery of the overpayment by 25% or \$25 as opposed to 10% or \$10. The commentor was concerned that the policy change would place an impediment on those wishing to have a hearing when the adverse action is a TANF sanction. The Department maintains this change is necessary to assist the Department in meeting the mandated work participation rate and in negating possible monetary penalties to the state by lowering the incentive for individuals to request a fair hearing solely for the purpose of retaining cash assistance without a requirement to participate in allowable work activities. The Department adopted 12 amendments which will be applied retroactively to July 1, 2007.

VI.

MAR 2007 Issue No. 13 (July 5, 2007), MAR Notice No. 37-404, NOTICE OF AMENDMENT -- a public hearing was held May 30, 2007 to consider amendments to nine rules pertaining to the Low Income Energy Assistance Program (LIEAP) and Low Income Weatherization Assistance Program (LIWAP). The rules established the updated version of the federal poverty guidelines to be used to set income standards and benefit amounts for the current heating season. A new provision was added to specify that a household's eligibility and benefit amount are based on the household's circumstances at the time the application is being processed. In addition, the Department made changes to the Low Income Weatherization Assistance Program (LIWAP) by setting priorities for Weatherization services since LIWAP funds are limited, and providing that delivery of weatherization services may be deferred to a later date if providing the services would pose a threat to the health and safety of the person living in the dwelling. No statement of reasonable necessity was provided for the amendments to Rule 37.70.602. Subsection (6)(b) of MCA 2-4-305 specifically provides that a statement of reasonable necessity for a change in rule must state the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Because of this, the Department is not amending Rule 37.70.602 at this time. The Department adopted the other eight amendments.

VII.

MAR 2007 Issue No. 13 (July 5, 2007), MAR Notice No. 37-403, NOTICE OF AMENDMENT -- the Department amended ARM 37.12.401 pertaining to laboratory testing fees. The rule references, as of July 1, 2007, the 2007 version of the state laboratory fee list, which provides an average increase of 9.7% in the cost of lab services. The revised fees were necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that

service. The new pricing was effective on the first day following publication of the final notice of adoption in the MAR, which was July 6, 2007. No public hearing was held.

**Notices of Proposed Rules:**

VIII.

MAR 2007 Issue No. 17 (September 6, 2007), MAR Notice No. 37-411, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of seven rules pertaining to Temporary Assistance for Needy Families (TANF). A hearing will be held October 1, 2007 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The public comment period runs to October 4, 2007. The purpose of the proposed rule amendments is to update and clarify the rules regarding TANF assistance. Proposed amendments to ARM 37.78.506 state that failure to provide verification of documentation of participation in allowable work activities will result in imposition of sanctions. This ARM has also been updated to clarify existing policy regarding the requirement for work-eligible individuals to agree to participate in allowable work activities during a sanction penalty month, prior to reduced TANF cash assistance being issued to the household. A proposed change to the sanction policy for TANF violations specifies that all individuals who are or would be required filing unit members at the time of the sanction be subject to the ineligibility period related to a sanction if an ineligibility period is imposed. This ineligibility period will follow those individuals if they apply for benefits in another case. The ARM has also been updated to reflect changes in the sanction policy that will require individuals who are applying for TANF cash assistance and who have been sanctioned at least twice to participate in an intensive case management meeting during the first month of eligibility. Failure to participate in this intensive case management meeting will result in case closure for failing an eligibility requirement. The Department is also proposing that individuals who are required to participate in allowable work activities be granted exceptions to participating provided a qualified medical professional provides a signed statement attesting to the temporary full incapacity of the individual. The Department is further proposing changes to decrease required participation hours in allowable work activities to better meet the needs of individuals who also have family obligations to be met. A further rule amendment would include a newborn minor child in the assistance unit upon the date of birth or adoption of the child. Currently, the child is not added to the household until the month following the addition. This change would allow the parent to take advantage of the exemption from allowable work activities sooner. ARM 37.78.420 has been updated to reflect the increase in TANF payment standards to 33% of the 2007 federal poverty level as approved by the 2007 Legislature. And finally, ARM 37.78.508 has been updated both to clarify and reflect changes to what constitutes good cause for failure to comply with a program requirement.

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

IX.

MAR 2007 Issue No. 14 (July 26, 2007), MAR Notice No. 37-410, NOTICE OF PUBLIC

HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of a rule pertaining to case management services for persons with developmental disabilities, reimbursement. A hearing was scheduled for August 15, 2007 in the Sapphire Room, 2401 Colonial Drive, Helena, Montana. The public comment period ran to August 23, 2007. The purpose of the proposed rule amendment is implement a standard rate system of reimbursement for developmental disabilities targeted case management services by referencing Section 1 of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures. Previously, reimbursement for developmental disabilities targeted case management services had been based upon historical patterns of reimbursement that generally were derived from the circumstances of service development and the individualized cost basis needs of each contracted for provider of targeted case management services. The new standard rate system of reimbursement is being established to provide a common standard targeted case management service rate for all providers of this service based upon common cost factors affecting the cost of service delivery for the targeted case management providers. The new reimbursement methodology allows for a consistently applied rate for the delivery of the service. The 2007 Legislature has approved funding that supports this case management reimbursement rate. The current number of consumers for targeted case management services is approximately 2,702. There are currently four case management services providers in addition to the state of Montana. Several years ago, the developmental disabilities program convened a series of work and advisory groups made up of program staff, providers, consumers, family members of consumers, advocacy organizations, members of the Montana legislature, and a legislative fiscal analyst. The principal advisory committee reached consensus that the department should develop standard reimbursement rates for developmental disabilities services. The proposed amendments would apply retroactively to July 1, 2007.

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

X.

MAR 2007 Issue No. 13 (July 5, 2007), MAR Notice No. 37-409, NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT -- the Department has filed a NOTICE OF HEARING in the matter of the proposed amendment of seven rules pertaining to inpatient hospital, outpatient hospital, and Rural Health Clinic (RHC) services. A hearing was scheduled for July 27, 2007 in the Wilderness Room, 2401 Colonial Drive, Helena, Montana. The public comment period ran to August 2, 2007. The purpose of the proposed rule amendments is to reflect the Department's intention to reimburse only nationally accredited birthing centers for Medicaid services (as well as licensed health care facilities). The Department wishes to extend the time allowed for a provider to repay Medicaid reimbursement to which is was not entitled (from 30 days to 60 days) and to specify in the rule pertaining to Medicaid utilization that Medicaid's disproportionate share (DSH) calculations are based on inpatient utilization. The Department also wishes to add a legislatively mandated provider rate increase to inpatient and outpatient services provided in hospitals reimbursed under a prospective payment reimbursement system. And finally the Department proposes to amend the sites of service for Rural Health Care

(RHC) providers to no longer include hospitals. The purpose of this proposed rule amendment is to conform Medicaid policy to Medicare practice. RHC services are not paid by Medicare when furnished to hospital patients because the Social Security Act forbids payments to any entity except the hospital for services provided to hospital patients with few exceptions. The exceptions basically state that physicians and other practitioners may be paid separately for their professional services provided to hospital patients. If a physician or other practitioner is being paid by a RHC for providing services, then the services are considered RHC services, not physician services and are therefore not excepted.

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

CI0425 7256lxa.