

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PROPOSED
Rules I through IV pertaining to child) ADOPTION
welfare prevention and support)
services contract enrollment and) NO PUBLIC HEARING
participation) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to adopt the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 10, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I PROVIDER PARTICIPATION (1) As a condition to contract with the Department of Public Health and Human Services (department), Child and Family Services Division, for Child Welfare Prevention and Support Services, including but not limited to prevention to both families, intervened on by the department, or at risk of entering the child welfare system, preservation, family support and reunification, a provider must:

- (a) comply with applicable state and federal statutes, rules, and regulations;
- (b) comply with applicable Montana statutes and rules governing licensure and certifications; and

(c) follow regulations and statutes governing programs the department has authority to administrate and distribute funds for, including:

- (i) Federal Child Access and Visitation Grant Program funds from U.S. Department of Health and Human Services, Administration of Children and Families, Office of Child Support Enforcement established under section 391 of the Personal Responsibility and Work Opportunity Reconciliation Act (welfare reform) of 1996 (Pub. L. 104-193, 110 Stat. 2258), also known as title III, subtitle I Enhancing Responsibility and Opportunity for Nonresidential Parents, and Section 469B of the Social Security Act;

- (ii) 1979 Title IV-B Social Security Act, Subpart 2;
- (iii) Title IV-E Social Security Act; and

(iv) 1974 Child Abuse Prevention and Treatment Act (CAPTA).

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE II PROVIDER ENROLLMENT AND AGREEMENTS

(1) Providers entering into a Child Welfare Prevention and Support Services contract must:

(a) follow requirements listed in the contract;

(b) submit a narrative and service array menu;

(c) provide information and documentation regarding:

(i) sanctions, suspensions, exclusions, or civil monetary penalties imposed against a provider, person, or entity with an ownership or control interest in a provider, or agent or managing employee of a provider by a Medicare program, a state Medicaid program, or other federal program(s); and

(ii) criminal charges brought against, and criminal convictions of, a provider, person, or entity with ownership or control interest in a provider, or agent or managing employee of a provider related to a person's or entity's involvement in a Medicare, Medicaid, or Title XX Services program.

(d) submit valid and current copies of certificates for employees licensed or trained in specific models and practices outlined in the Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog;

(e) provide written assurance the provider understands and agrees they are solely responsible in maintaining sustainability of their program, and will comply with fidelity of well supported, supported, promising, and general practices (i.e., evidence-based, trauma focused, or evidence-informed models) listed in their service array menu in relation to the Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog;

(f) implement and enforce, as internal company policy, mandatory reporting requirements of 41-3-201, MCA, requiring employees with knowledge of or reasonable cause to suspect child abuse or neglect, to report the matter promptly to the Department of Public Health and Human Services, Child and Family Services Division, Centralized Intake (CI) Bureau, at 1-866-820-5437 (toll-free); and

(g) provide employees, within the first week of hiring, written notification of mandatory reporting law and provider's policy and practice enforcing the law. The provider shall maintain written documentation bearing the employee's dated signature, acknowledging receipt of such written notification.

(2) An enrolled provider shall not retroactively change category of service for which a provider is enrolled and must submit a narrative and service array menu outlining new categories to the department's liaison.

(a) An approved change in service category will be effective on or after the effective date of required licenses and certifications.

(b) Change will apply to services provided on or after the effective date of change.

(3) The provider must provide the department's liaison 30 days' advance written notice of change in the provider's name, address, tax identification number, group practice arrangement, business organization, or ownership.

(4) The provider, whose services are covered by Title XVIII program (Medicare), shall meet certification standards of Medicare except as provided otherwise in these rules.

(5) The provider shall render services to children and families served in the same scope, quality, duration, and method of delivery as to the general public, unless specifically limited by these regulations.

(6) Department employees may make referrals for children or families coming to the attention of the department for prevention or support services.

(7) The department is not obligated to assign referrals to a provider, and the provider is not obligated to accept referrals offered by the department for assignment.

(8) The provider shall not discriminate provision of service to children and families served or in employment of persons on grounds of race, creed, religion, color, sex, national origin, political ideas, marital status, age, or disability.

(9) The Child Welfare Prevention and Support Services Scope of Work, Procedures, and Child Welfare Prevention and Support Services Matrix Payment Fee Schedule and Catalog are uploaded to the department's Child and Family Services Division website: <https://dphhs.mt.gov/cfsd/titleivbavmatrix>.

(a) Notice of changes made to documents will be provided via email to providers by the department's liaison.

(10) Approved enrollment is effective upon execution of contract.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE III BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) The department will reimburse the provider for services provided in accordance with the Child Welfare Prevention and Support Services Matrix Fee Schedule and Catalog.

(2) The provider will comply with billing procedures set forth in the contract.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

NEW RULE IV PROVIDER EDUCATION (1) Except where termination has been imposed, the department may, in its discretion, direct a sanctioned provider to participate in a provider education program as a condition of continuing services.

(2) At the discretion of the department, provider education programs may include:

(a) instruction in claim form completion;

(b) instruction on use of the Child Welfare Prevention and Support Services Rate Matrix Fee Schedule and Catalog;

(c) instruction on statutes and regulations governing:

(i) Federal Child Access and Visitation Grant Program;

- (ii) Title IV-B Subpart 2;
- (iii) Title IV-E Social Security; and
- (iv) Child Abuse Prevention and Treatment Act (CAPTA).
- (d) instructions on coding or billing issues; and
- (e) other matters as determined by the department.

AUTH: 41-3-101, 41-3-131, 52-1-103, 52-2-111, MCA

IMP: 2-4-201, 41-3-101, 41-3-302, 42-1-102, 52-1-103, 52-2-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV pertaining to child welfare prevention and support services contract enrollment and participation.

In an ongoing effort to inform and interact with the public regarding Title IV-B and Access and Visitation service contractual matters, the Child and Family Services Division (CFSD) in July of 2019 set forth a universal process by which interested and eligible parties are able to secure and execute a contract to provide services similar to the open enrollment process of Medicaid providers.

These open enrollment contracts took the place of the request for proposal (RFP) process. The contracts ensure clarity regarding contract scope of work, procedures, fees, and services. This shift was to expand services geographically, maximize providers, and increase the number of clients being served.

A rate matrix was developed for the contracts and rates set forth throughout the matrix were developed using rates from Medicaid, Casey Family Programs Catalog, Families First Prevention and Services Act, California Evidence Based Clearing House, and previous Montana Title IV-B and Access to Visitation services rates.

Service providers were notified in April of 2019 of the upcoming changes. At that time, stakeholders were given an opportunity to provide written feedback, and this feedback, when applicable, was utilized to inform and develop the existing matrix and contracts that have been in place since July 1, 2019. In addition, site visits with current providers and presentation to CFSD staff occurred in June of 2019 to support providers who were currently contracted with CFSD for a smooth transition into the open enrollment contracts, as well as to make outreach to new providers.

The purpose of these contracts is to assist in cases where it is deemed professional services are necessary by providing the following:

- a. assistance in enabling, developing, establishing, and expanding general practices;
- b. operate coordinated programs consisting of community-based family support services, family-based preservation services, reunification services, adoption promotion and support services, and access and visitation services;

- c. prevent child maltreatment among families who are at risk of entering the child welfare system through provision of supportive family and prevention services and assisting families already involved with the department;
- d. ensure child safety within the home and preserve intact families when the family's problems can be addressed effectively;
- e. address the problems of families whose children have been placed in foster care so that reunification may occur in a safe and stable manner;
- f. support adoptive families by providing support services as necessary so that they can make a lifetime commitment to their children; and
- g. establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children during intervention by CFSD.

Due to the shift from RFP contracts to open enrollment contracts, CFSD met with the procurement office and were encouraged to create rules regarding open enrollment and participation to ensure there is transparency and adequate notice given to providers when any changes are made to the rates, enrollment, and contracts procedures.

These open enrollment contracts encompass many funding streams for CFSD and other divisions of the department. The proposal is that the rules cover all Child Welfare Prevention and Support Services contracts.

New Rule I Provider Participation

New Rule I is proposed for clarification of services being provided including, but not limited to, prevention to both families, intervened on by the department, or at risk of entering the child welfare system, preservation, family support, and reunification.

This rule also requests contractors to comply with state and federal statutes, rules, and regulations, Montana statutes and rules governing licensure and certifications, and regulations and statutes to funding streams.

New Rule II Provider Enrollment and Agreements

New Rule II explains the process of how a provider would become a contractor, by entering into a Child Welfare Prevention and Support Services contract and identify the service array to be provided.

This rule also provides a description of how providers can obtain the Scope of Work, Procedures, and Matrix Payment Fee Schedule and Catalog, and a description of how notices of change made to these documents will be provided.

New Rule III Billing, Reimbursement, Claims Processing, and Payment

New Rule III describes how providers can bill and be reimbursed for services.

New Rule IV Provider Education

New Rule IV defines steps to be taken to support providers with education surrounding the funding sources, billing procedures, and scope of work.

Fiscal Impact

The department does not believe that the proposed new rules will have any fiscal impact.

5. The department intends to apply these new rules retroactively to July 1, 2019. There is no negative impact to the affected providers by applying the rule adoptions retroactively.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Heidi Clark, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 24, 2020. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Heidi Clark at the above address no later than 5:00 p.m., July 24, 2020.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 6 persons based on 60 providers.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ Mark Prichard for Caroline Warne
Caroline Warne
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.