

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.40.307 pertaining to nursing) PROPOSED AMENDMENT
facility reimbursement)

TO: All Concerned Persons

1. On July 31, 2023, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82105330198?pwd=ejBQeFFKNDdQc0RaU29VWDhRc055UT09>, meeting ID: 821 0533 0198, and password: 425935; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 821 0533 0198, and password: 425935. Find your local number: <https://mt-gov.zoom.us/j/82105330198>.

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 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-3026; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2020, and in subsequent rate years, the reimbursement rate for each nursing facility will be determined using the flat rate component specified in (2)(a) and the quality component specified in (2)(b).

(a) The flat rate component is the same per diem rate for each nursing facility and will be determined each year through a public process. Factors that could be considered in the establishment of this flat rate component include cost of providing nursing facility services and Medicaid recipient access to nursing facility services. The flat rate component for state fiscal year (SFY) ~~2023~~ 2024 is ~~\$209.34~~ \$257.54.

(b) The quality component of each nursing facility's rate is based on the 5-star rating system for nursing facility services calculated by the Centers for Medicare & Medicaid Services (CMS). It is set for each facility based on their average 5-star rating for staffing and quality. Facilities with an average rating of 3 to 5 stars will receive a quality component payment. The funding for the quality component

payment will be divided by the total estimated Medicaid bed days to determine the quality component per Medicaid bed day. The quality component per bed day is then adjusted based on each facility's 5-star average of staffing and quality component scores. A facility with a 5-star average of staffing and quality component scores will receive 100%, a 4-star average will receive 75%, a 3-star average will receive 50%, and 1- and 2-star average facilities will receive 0% of the quality component payment. Funds unused by the first allocation round will be reallocated based on the facility's percentage of unused allocation against the available funds.

(c) The total payment rate available for the period ~~July 1, 2022~~ July 1, 2023, through ~~June 30, 2023~~ June 30, 2024, will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361. Copies of the department's current nursing facility Medicaid reimbursement rates per facility are posted at <https://medicaidprovider.mt.gov/26#1875810541>, or may be obtained from the Department of Public Health and Human Services, Senior & Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the flat rate component as computed on ~~July 1, 2022~~ July 1, 2023. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.40.307 by revising nursing facility reimbursement rates for the upcoming State Fiscal Year (SFY) 2024.

The proposed amendments 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 rate calculation includes House Bill (HB) 2 funding appropriated by the Montana Legislature during the 68th Legislative Session and annualized SFY 2023 Medicaid paid days to determine nursing facility providers' reimbursement according to the methodology outlined under (2) of the rule. In balancing the factors that may be considered under 53-6-113, MCA, and ARM 37.40.307(2) to establish the rate, the department's primary consideration was the availability of appropriated funds and availability of services.

Copies of the department's proposed nursing facility Medicaid reimbursement rates per facility are located under "Proposed Rules Changes" tab at: <https://medicaidprovider.mt.gov/26>.

The proposed amendments are necessary for the department to provide notice of the change to Medicaid nursing facility provider rates.

Fiscal Impact

The estimated total cost of the proposed rate increase is approximately \$30,297,189. These amounts do not include at risk provider funds or direct care wage funding.

Anticipated days for SFY 2024 are 745,575 using estimates from SFY 2023 Medicaid paid days.

The SFY 2024 appropriated funding for lump-sum payments to providers for direct care and ancillary workers is \$6,964,596 for the nursing facility direct-care worker wage program and \$3,962,026 for CNAs only direct-care worker wages program.

66 nursing facility providers participated in the Medicaid nursing facility payment program in SFY 2023 and approximately 2,656 recipients received services in nursing facilities under Medicaid.

The department intends to retroactively apply these proposed amendments to July 1, 2023.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-3026; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 4, 2023.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. 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 paragraph 5.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State June 27, 2023.