

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.104 and 37.85.105)
pertaining to updating Medicaid and)
non-Medicaid provider rates, fee)
schedules, and effective dates)

TO: All Concerned Persons

1. On November 18, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1018 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2202 of the 2022 Montana Administrative Register, Issue Number 22. On January 27, 2023, the department published a notice of extension of comment period on the proposed amendment at page 84 of the 2023 Montana Administrative Register, Issue Number 2.

2. The department has withdrawn the reimbursement rates for mobile crisis response services on the following fee schedules: Medicaid Adult Mental Health Medicaid fee schedule, Substance Use Disorder Medicaid fee schedule, non-Medicaid Mental Health Medicaid fee schedule, Substance Use Disorder non-Medicaid fee schedule, and Youth Mental Health fee schedule. This is the result of unexpected delays in drafting and filing a corresponding rulemaking for these services. Additionally, the department was delayed in submitting a request to the Centers for Medicare & Medicaid Services (CMS) to add mobile crisis response services to the Medicaid State Plan effective January 1, 2023. The department will take the specific recommendations on mobile crisis response, provided during this rulemaking, into consideration for future rulemaking.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) remains as proposed.

(a) Mental health crisis services, as provided in ARM 37.88.101, is effective ~~January 1, 2023~~ October 1, 2022.

(b) and (c) remain as proposed.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~January 1, 2023~~ October 1, 2022.

(2) remains as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (5) remain as proposed.

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~January 1, 2023~~ October 1, 2022.

(b) remains as proposed.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~January 1, 2023~~ October 1, 2022.

(6) For the Behavioral Health and Developmental Disabilities Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~January 1, 2023~~ May 12, 2023.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The Montana Optometric Association stated that the department's proposed fee schedules did not include sufficient information to review the proposed changes.

RESPONSE #1: In response to the comment, the department extended the comment period to February 3, 2023, by filing a notice of extension of comment period on the proposed amendment. The department was able to provide and publish updated fee schedules to its web site on January 26, 2023, allowing for public comment on the posted fee schedules.

COMMENT #2: The department received a comment stating the department fails to comply with the legislative appropriations and applicable law. The commenter cited a statute in Title 37, MCA, and asserted optometrists should be reimbursed equal to the amount paid to medical doctors and doctors of osteopathy, whose reimbursement the Montana legislature has directed to be paid pursuant to 53-6-125, MCA.

RESPONSE #2: As the commenter is aware, this assertion is the subject of a lawsuit filed in state district court and will be resolved through that process.

COMMENT #3: Several commenters presented questions or comments regarding administration of mobile crisis response services and other Medicaid-covered services. This rulemaking included fee schedules with reimbursement rates.

RESPONSE #3: This rulemaking was limited to proposed fee schedules for mobile crisis response services; thus, these comments are outside the scope of this rulemaking. The department acknowledges receipt of these questions and

comments. It has been the experience of the department that providers and partner agencies have invaluable knowledge and experience regarding the delivery of services; therefore, the department will take these recommendations under consideration for future rulemaking after consultation with the commenters and the larger provider community.

COMMENT #4: A commenter indicated that the 14-day diversion rate was reduced from \$575/day to \$367/day.

RESPONSE #4: The department disagrees, as the 14-day diversion rate is not included in the current rulemaking. The 14-day diversion rate was an individually contracted service prior to the inclusion of Non-Medicaid Mental Health Services described in the BHDD Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, effective October 1, 2022. Those services now are available to providers that meet requirements without the need for a separate contract.

COMMENT #5: Multiple commenters recommended the department raise proposed mobile crisis response reimbursement rates to account for leadership and care coordinator positions, reduced productivity due to overnight trends, administrative costs, travel time, phone coverage, missed contacts, episodes where the client cannot be located, and staff support.

RESPONSE #5: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates including the following: staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #6: A commenter recommended the department increase the proposed mobile crisis reimbursement rates for 12/7 coverage to match those reimbursement rates proposed for 24/7 coverage.

RESPONSE #6: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates, including staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #7: A few commenters recommended the department no longer limit the utilization of mental health licensure candidates to mental health centers (MHCs) and federally qualified health centers (FQHCs) and permit these candidates to engage with clients in additional settings.

RESPONSE #7: These comments are outside the scope of this rulemaking. The department acknowledges receipt of this recommendation. The department will take these recommendations under consideration for future rulemaking.

COMMENT #8: A commenter recommended the department add per diem rates for mobile crisis response services.

RESPONSE #8: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates, staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #9: A commenter said youth in therapeutic group homes (TGH) greatly benefited from community-based psychiatric rehabilitation and support (CBPRS) services, which were made available to youth in that setting during the public health emergency (PHE) and were increased from 8 units per day to up to 16 units per day. The services also assisted providers treating youth in TGHs. The commenter requested the department make the expanded services permanent for youth in TGHs.

RESPONSE #9: The department agrees with this recommendation, and has updated the fee schedule language. The fee schedule has been updated to allow mental health centers to bill for CBPRS-group services for youth in TGHs, and to increase the daily limit of CBPRS-group services for such youth to 16 units per day.

COMMENT #10: In reviewing the State Plan Amendment submitted by Montana, the Centers for Medicare & Medicaid Services (CMS) recommended the effective date of the proposed changes related to children's mental health be updated to the "Day After End of PHE End."

RESPONSE #10: The department agrees with this recommendation and will update the Youth Mental Health Fee schedule effective date to May 12, 2023, which is one day after the recently announced end of the public health emergency (PHE), May 11, 2023. This will not cause a disruption in services as all proposed updates are currently in effect through the disaster recovery State Plan Amendment.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State February 14, 2023.