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

In the matter of the amendment of ARM 37.85.212, 37.86.101, 37.86.104, 37.86.105, 37.86.205, and 37.86.1201 pertaining to physician program updates

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 15, 2017, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of 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 June 7, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES

(1) For purposes of this rule, the following definitions apply:
   (a) remains the same.
   (b) "Conversion factor" means a dollar amount by which the relative value units, or the anesthesia units for anesthesia services, are multiplied in order to establish the RBRVS fee for a service. The effective date and conversion factor amounts are adopted at ARM 37.85.105(2). There are four conversion factor categories:
      (i) remains the same.
      (ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, school-based services, birth attendants licensed direct-entry midwives, and EPSDT orientation and mobility specialists;
      (b)(iii) through (i) remain the same.
(2) Services provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):
   (a) through (t) remain the same.
   (u) birth attendants licensed direct-entry midwives;
   (v) through (10) remain the same.

AUTH:  53-2-201, 53-6-113, MCA
IMP:  53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-125, MCA

37.86.101 PHYSICIAN SERVICES, DEFINITIONS  (1) through (4) remain the same.
   (5) The department adopts and incorporates by reference the Physician-Related Services Manual governing the administration of the Physician program dated August 1, 2015. The Physician-Related Services Manual is available for public viewing at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and at the department’s web site at http://medicaidprovider.mt.gov.
   (6) A "primary care service" for purposes of this rule means covered evaluation and management (E&M) procedure codes in the range 99201-99499 and vaccine administration codes 90460, 90461, 90471, 90472, 90473, and 90474 and their successors.
   (7) A "primary care physician" for purposes of this rule means a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine and all subspecialties of these three specialties recognized by the American Board of Medical Specialties, American Board of Physician Specialties, and American Osteopathic Association.
   (8) remains the same, but is renumbered (5).

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

37.86.104 PHYSICIAN SERVICES, REQUIREMENTS  (1) through (11) remain the same.
   (12) Primary care physicians are required to self-attest with the department that they meet the definition of primary care physician. They will do so by enrolling as a primary care physician as defined in ARM 37.86.101(6) with Montana Medicaid.
   (13) The department will confirm the self-attestation of the physician. Providers that are found to be eligible for this program are eligible to receive additional reimbursement commencing from the date of confirmation. Confirmation consists of:
       (a) verification of board certification by the American Board of Medical Specialties, American Board of Physician Specialties, and American Osteopathic Association as a primary care physician as defined in ARM 37.86.101(6); or
       (b) a determination through claims review that at least 60 percent of the codes billed were primary care services as defined in ARM 37.86.101(5).
   (12) The department adopts and incorporates by reference the Physician-Related Services Manual governing the administration of the Physician program
dated November 1, 2016. The Physician-Related Services Manual is available for public viewing at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and at the department's web site at http://medicaidprovider.mt.gov.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS

(1) through (3) remain the same.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "A", "J", and "Q", or "S" codes is made will be paid according to the department's fee schedule or the provider's usual and customary charge, whichever is lower. The department's fee schedule is updated at least annually based upon:

(a) through (c) remain the same.

(d) the Medicaid fee as determined in (7) (9).

(5) Physician administered compound drugs must be billed with the associated HCPCS; an invoice is required to be attached. The invoice must list each ingredient in the compound with the associated NDCs, and the quantity of each ingredient. Physician administered compound drugs are paid by invoice.

(5) remains the same, but is renumbered (6).

(7) Reimbursement rates for adult and children vaccines are extracted from the Private/Sector Cost/Dose fee schedule maintained by the Center for Disease Control (CDC). Private sector vaccine pricing are reported by vaccine manufacturers annually to the CDC.

(6) remains the same, but is renumbered (8).

(7) (9) A Medicaid fee for services without fees is determined for physician services and anesthesia services as defined at ARM 37.85.212 and birth attendant licensed direct-entry midwife services as defined at ARM 37.86.1201.

(a) The Medicaid fee is determined for procedure codes;

(i) that are new, (less than one year in existence), or ;

(ii) that have no or low utilization, or ;

(iii) that have inconsistent charges by reviewing cost information for the service if available, or ;

(iv) by reviewing the reimbursement of similar services if cost information is not available.

(b) Otherwise, the Medicaid fee in (7) this section is determined by multiplying the average charge for the service by the payment-to-charge ratio.

(8) Reimbursement for primary care services performed by confirmed primary care physicians:

(a) for E&M procedure codes and vaccine administration codes not part of the VFC program, in calendar year 2013, is the 2013 Montana Medicare reimbursement amount or the amount determined by multiplying the 2009 Medicare conversion factor by the 2013 relative value unit for Montana, whichever is greater;
(b) for vaccine administration codes for the VFC program in calendar year 2013 is the lesser of the 2013 Montana Medicare reimbursement amount or the maximum regional VFC amount;

(e) for E&M procedure codes and vaccine administration codes not part of the VFC program, in calendar year 2014, is the 2014 Montana Medicare reimbursement amount or the amount determined by multiplying the 2009 Medicare conversion factor by the 2014 relative value unit for Montana, whichever is greater;

(d) for E&M procedure codes and vaccine administration codes not part of the VFC program, January 1, 2015 through June 30, 2015, is the 2015 Montana Medicare reimbursement amount or the amount determined by multiplying the 2009 Medicare conversion factor by the 2015 relative value unit for Montana, whichever is greater;

(f) for vaccine administration codes for the VFC program, January 1, 2015 through June 30, 2015, is the lesser of the 2015 Montana Medicare reimbursement amount or the maximum regional VFC amount; and

(9) through (11) remain the same, but are renumbered (10) through (12).

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

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT

(1) through (3) remain the same.

(4) Coverage of mid-level practitioner services is limited to the provision of services by the following providers:

(a) remains the same.

(b) hospitals employing or contracting with certified registered nurse anesthetists if:

(i) and (ii) remain the same.

(iii) the hospital bills for services on form HCFA-1500 CMS 1500 or CMS 837P electronic transaction.

(c) physicians, ambulatory surgical centers, diagnostic centers or public health departments, employing or contracting with mid-level practitioners if:

(i) remains the same.

(ii) the physician or the provider entity bills for services on form HCFA-1500 CMS 1500 or CMS 837P electronic transaction.

(5) remains the same.

(6) Reimbursement for immunizations, drugs which are billed under associated HCPCS "J" and "Q" codes, family planning services, administration of injectables, radiology, laboratory and pathology, cardiology and echocardiography services, and for clients under 21 years of age is the lower of:

(a) and (b) remain the same.

(7) Mid-level practitioners under the supervision of a primary care physician and performing primary care services as defined in ARM 37.86.101 and 37.86.104
qualify for enhanced reimbursement as defined at ARM 37.86.105 except that reimbursement must be reduced in accordance with provisions in this rule.

(8) A mid-level practitioner must submit all claims for services personally provided by the mid-level practitioner, using the mid-level practitioner's own Medicaid provider number and any appropriate modifiers, unless another provider is authorized to bill for services provided by the mid-level practitioner by administrative rule or state law.

(9) through (13) remain the same, but are renumbered (7) through (11).

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

37.86.1201 BIRTH ATTENDANT SERVICE LICENSED DIRECT-ENTRY MIDWIFE

(1) "Birth Attendant" "Direct-entry midwife" means a person that is licensed as a direct-entry midwife as defined in Title 37, chapter 27, MCA and ARM Title 24, chapter 111, subchapter 6.

(2) Birth attendants Direct-entry midwives may only provide prenatal labor and delivery or postpartum care in a birthing center as defined at ARM 37.86.3001.

(3) Reimbursement for birth attendants direct-entry midwives will be determined in accordance with ARM 37.85.212 and 37.86.105.

(4) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 describe the terms commonly used by the Montana Medicaid Program in implementation of the program's birth attendant direct-entry midwife fee schedule.

(5) The "Physician-Related Services Manual" adopted at ARM 37.86.101 governs the administration of the Birth Attendant Program Direct-Entry Midwife Program.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.212, 37.86.101, 37.86.104, 37.86.105, 37.86.205, and 37.86.1201 to clarify covered services, remove language for a program that is no longer active, and clarify pricing methodology for selected services. This will maximize efficiency of the existing rules and repeal outdated rules.

ARM 37.86.101, 37.86.104, 37.86.105, and 37.86.205

The Primary Care Enhanced Payment Program ended June 30, 2015. This program is referenced in ARM 37.86.101(6) and (7); 37.86.104(12) and (13); 37.86.105(8); and 37.86.205(7) and (8), and those references should be removed because the program no longer exists.
ARM 37.86.105

The proposed rule amendment would update and clarify the methods in which physician administered drugs and vaccines are priced. This involves updating ARM 37.86.105(4) for HCPCS codes and compound drugs and adding a category for vaccine pricing.

ARM 37.86.205

The proposed rule amendment in ARM 37.86.205(4)(b)(iii) and (c)(ii) would update approved forms to submit claims.

ARM 37.85.212 and 37.86.1201

It is necessary to change Birth Attendant to Direct Entry Midwife to clarify which services are covered, reimbursement methodology, and where the services can be performed. This involves updating ARM 37.85.212(2)(u) and 37.86.1201(1) through (5).

Update MCA references for ARM 37.85.212(4).

Update Physician Related Services Manual date reference.

Fiscal Impact

There is no fiscal impact related to the ARM updates.

5. The department intends these proposed amendments to be effective on August 1, 2017.

6. 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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 23, 2017.

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

8. 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.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. 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/ Brenda K. Elias          /s/ Sheila Hogan
Brenda K. Elias, Attorney   Sheila Hogan, Director
Rule Reviewer              Public Health and Human Services

Certified to the Secretary of State May 15, 2017.