

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 37.85.105 pertaining to) PROPOSED AMENDMENT
updating Medicaid fee schedules with)
Medicare rates and updating effective)
dates)

TO: All Concerned Persons

1. On December 5, 2017, at 1:00 p.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 rule.

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 November 15, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY
ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID
PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 80 Federal Register 220, page 70886 (November 16, 2015) effective January 1, 2016 which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2017~~ January 1, 2018 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2017~~ January 1, 2018. The conversion factor for physician services is \$37.89. The conversion factor for allied

services is \$25.38. The conversion factor for mental health services is \$24.90. The conversion factor for anesthesia services is \$29.76.

(c) through (i) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2017~~ January 1, 2018.

(d) and (e) remain the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective July 1, 2016:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$2.00~~ \$3.41 and the maximum is \$15.00;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$2.00~~ \$3.41 and the maximum is \$13.00; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~\$2.00~~ \$3.41 and the maximum is \$11.00.

(g) and (h) remain the same.

~~(i) The out-of-state providers will be assigned a \$3.50 dispensing fee.~~

(j) and (k) remain the same, but are renumbered (i) and (j).

~~(k)~~ (k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2017~~ January 1, 2018, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2017~~ January 1, 2018. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2015~~ January 1, 2018.

(m) through (q) remain the same, but are renumbered (l) through (p).

~~(r)~~ (q) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM ~~37.85.610~~ 37.86.610, are effective January 1, 2017.

~~(s)~~ (r) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~January 1, 2017~~ January 1, 2018.

~~(t)~~ (s) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2016~~ January 1, 2018.

~~(u)~~ (t) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2017~~ January 1, 2018.

~~(v)~~ (u) The Federal Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for education health services, as provided in ARM 37.86.4412, is effective ~~January 1, 2017~~ July 1, 2017.

(w) and (x) remain the same, but are renumbered (v) and (w).

(4) through (6) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules to January 1, 2018.

The following introductory explanation represents the reasonable necessity for the proposed changes in this Montana Administrative Register (MAR) notice to the rule.

The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The rule amendment is necessary so that the Montana Medicaid program can adopt updates to procedure codes that the federal Medicare program will enact in January 2018. The federal Medicare program's updates include new code additions, code deletions, and changes to existing code descriptions. Medicare enacts routine updates every January, and Montana Medicaid, which uses Medicare procedure codes for billing, must adopt the changes for the state program.

The following describes in detail the proposed amendments that will be made to ARM 37.85.105.

ARM 37.85.105(2)(a)

The department is proposing to adopt new Medicare codes that are effective on January 1, 2018, and will amend the effective date for procedure codes that are reimbursed using the relative value units from the Medicare Physician Fee Schedule in place from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(2)(b)

The department is proposing to amend the effective date for RBRVS fee schedules from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(c)

The department is proposing to amend the effective date for the hearing aid services fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(f)(i), (ii), and (iii)

After negotiations with the Centers for Medicare and Medicaid (CMS) regarding the Pharmacy State Plan, the department agreed to update the outpatient drug reimbursement for dispensing fee ranges to reflect the revisions made to the Pharmacy State Plan.

As a result of negotiations with CMS, the department will reimburse Montana Medicaid enrolled pharmacies that do not return the annual dispensing fee survey the department's lowest calculated cost to dispense for that year. Thus, the department is revising the minimum dispensing fee amount to reflect the lowest calculated cost to dispense.

ARM 37.85.105(3)(i)

After negotiation with CMS regarding the Pharmacy State Plan, the department agreed to remove the reference to a separate out-of-state dispensing fee.

ARM 37.85.105(3)(k)

The department is proposing to amend the effective date of the Region D Supplier Manual from July 1, 2017, to January 1, 2018. The department is amending the effective date of local coverage determinations (LCDs), national coverage determinations (NCDs) as provided in ARM 37.86.1802 from July 1, 2015, to January 1, 2018.

The department is proposing to adopt the Calendar Year 2018 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule in order to comply with the 21 Century Cures Act (Act) signed December 13, 2016, by President Obama. Beginning January 1, 2018, the Act requires that all State Medicaid programs make no fee for service payments for Durable Medical Equipment that exceed the DMEPOS fee schedule amount, including, as applicable, those items included under a competitive acquisition program as described at 42 USC 1395w-3.

ARM 37.85.105(3)(q)

The department proposes to delete the reference to ARM 37.85.610 because that rule does not exist and replace it with the correct rule for occupational therapists, physical therapists, and speech therapists, ARM 37.86.610.

ARM 37.85.105(3)(r)

The department is proposing to amend the effective date for the optometric fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(s)

The department is proposing to amend the effective date for the chiropractic fee schedule from July 1, 2016, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(t)

The department is proposing to amend the effective date for the lab and imaging fee schedule from January 1, 2017, to January 1, 2018. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(u)

The department is proposing to amend the Federal Qualified Health Center and Rural Health Clinic (FQHC/RHC) education health services fee schedule from January 1, 2017, to July 1, 2017, to align with the State Plan. The retroactive date will not have a negative impact to providers.

Fiscal Impact

The following table displays the provider groups affected, the number of providers by type, and the fiscal impact to State general funds for SFY 2018 and SFY 2019 for the proposed amendments.

Provider Type	SFY 2018 Budget Impact (State Funds)	SFY 2018 Budget Impact (Federal Funds)	Total	Providers Affected
Durable Medical Equipment	(\$535,849)	(\$1,015,538)	(\$1,551,387)	442
Hearing Aid	\$1,557	\$2,951	\$4,508	34
Optometric/ Optician	\$31,924	\$60,502	\$92,426	228
Pharmacy	\$181,726	\$344, 4047	\$526,133	417
Provider Type	SFY 2019 Budget Impact (State Funds)	SFY 2019 Budget Impact (Federal Funds)	Total	Providers Affected
Durable Medical Equipment	\$73,461	\$142,727	\$216,188	442
Hearing Aid	\$1,555	\$3,021	\$4,576	34
Optometric/ Optician	\$31,878	\$61,925	\$93,813	228

Optician				
Pharmacy	\$178,780	\$347,353	\$526,133	417

5. With the exception of the FQHC and RHC fee schedules in (3)(u), the proposed rule amendments will be effective January 1, 2018. The FQHC and RHC fee schedules in (3)(u) will be effective retroactively to July 1, 2017. There is no adverse impact to providers for this retroactive effective date.

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., December 7, 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. 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 significantly and directly impact providers referred to in the above table, some of which meet the definition of small businesses in 2-4-102(13), MCA. The proposed amendments are required by CMS and therefore, there are no alternative methods available to implement the proposed rule amendments that would minimize or eliminate potential negative impacts on 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/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State October 30, 2017.