

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 37.85.104 and 37.85.105) PROPOSED AMENDMENT
pertaining to updating Medicaid fee)
schedules with Medicare rates and)
updating effective dates to July 1,)
2016 and January 1, 2017)

TO: All Concerned Persons

1. On November 17, 2016, at 1:30 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 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 November 9, 2016, 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:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

- (a) and (b) remain the same.
- (c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~July 1, 2016~~ January 1, 2017.
- (d) and (2) remain the same.

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) 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, 2016~~ January 1, 2017 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 ~~July 1, 2016~~ January 1, 2017. 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) remains 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 ~~July 1, 2016~~ January 1, 2017.

(d) through (k) remain the same.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~July 1, 2016~~ January 1, 2017, 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 ~~July 1, 2016~~ January 1, 2017. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective July 1, 2015.

(m) through (q) remains the same.

(r) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.85.610, are effective ~~July 1, 2016~~ January 1, 2017.

(s) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~July 1, 2016~~ January 1, 2017.

(t) remains the same.

(u) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~July 1, 2016~~ January 1, 2017.

(v) 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.

(w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective July 1, 2016.

(x) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective July 1, 2016.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) Home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1,~~ 2016 January 1, 2017.

(b) through (5) remain the same.

(6) The department adopts and incorporates by reference, the fee schedule for the following programs within the Developmental Services Division, on the date stated.

(a) Mental health services for youth, as provided in ARM 37.87.901 in the Medicaid Youth Mental Health Services Fee Schedule, is effective ~~July 1,~~ 2016 January 1, 2017.

(b) remains 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 the amendment of ARM 37.85.104 and 37.85.105 pertaining to updating Medicaid fee schedules with Medicare rates and updating effective dates to July 1, 2016 and January 1, 2017.

HEALTH RESOURCES DIVISION - PROPOSED AMENDMENTS TO ARM 37.85.105

Montana Medicaid programs within the Health Resources Division (HRD), will be revising fee schedules, effective dates, rates, and reference dates to reflect the changes regarding Medicare updates. In January, Medicare updates procedure codes with any new code additions, code deletions, and changes to existing code descriptions. The programs that utilize Medicare pricing will need to stay current and compliant with these Medicare changes.

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 for January 1, 2017 and will amend the effective date in place regarding procedure codes being reimbursed using the relative value units from the Medicare Physician Fee Schedule in place from January 1, 2016 to January 1, 2017. 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 regarding RBRVS fee schedules from July 1, 2016 to January 1, 2017. 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 regarding the hearing aid services fee schedule from July 1, 2016 to January 1, 2017. 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)(l)

The department is proposing to amend the effective date of the reference to the Region D Supplier Manual from July 1, 2016 to January 1, 2017. 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, 2016 to January 1, 2017.

ARM 37.85.105(3)(r)

The department is proposing to amend the effective date regarding the occupational therapists and physical therapists fee schedule from July 1, 2016 to January 1, 2017. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule. There is no anticipated cost due to this proposed amendment.

ARM 37.85.105(3)(s)

The department is proposing to amend the effective date regarding the optometric fee schedule from July 1, 2016 to January 1, 2017. 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 effective date regarding the lab and imaging fee schedule from July 1, 2016 to January 1, 2017. 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)(v)

The department is proposing to amend the FQHC/RHC fee schedule for education health services, as provided in ARM 37.86.4412 effective January 1, 2017.

ARM 37.85.105(3)(w)

The department is proposing to amend the Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910 effective July 1, 2016.

ARM 37.85.105(3)(x)

The department is proposing to amend the Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415 effective July 1, 2016.

Fiscal Impact

The following table displays the number of providers affected, as well as the fiscal impact to State general funds for SFY 2017, SFY 2018, and SFY 2019, based on the proposed amendments.

Provider Type	SFY 2017 Budget Impact (State Funds)	SFY 2018 Budget Impact (State Funds)	SFY 2019 Budget Impact (State Funds)	Active Provider Count
Hearing Aid	\$312	\$624	\$626	29
Lab & Imaging	\$362	\$717	\$711	243
Optometric/Optician	\$8,884	\$17,774	\$17,852	174
Physician	\$12,349	\$24,418	\$24,239	13,374
Total	\$21,907	\$43,533	\$43,428	

The proposed rule is estimated to affect 182,582 Medicaid members. In addition, it will impact the provider populations outlined in the tables above.

DEVELOPMENTAL SERVICES DIVISION, CHILDREN'S MENTAL HEALTH BUREAU (CMHB) - PROPOSED AMENDMENTS TO ARM 37.85.104 AND 37.85.105

MAR Notice No. 37-719 removed the prior authorization requirement for acute hospital. The language, "All admissions of Medicaid recipients require prior authorization" must be removed from The Medicaid Youth Mental Health Fee Schedule to align policy with MAR Notice No. 37-719. Out-of-state acute hospital stays still require prior authorization. The proposed rule also updates the effective date from July 1, 2016 to January 1, 2017.

ARM 37.85.104

The department proposes to amend the Non-Medicaid Youth Mental Health Fee Schedule to align policy with MAR Notice No. 37-719 and update the date from July 1, 2016 to January 1, 2017 which is necessary because the non-Medicaid fees are listed on the Medicaid Youth Mental Health Fee Schedule.

ARM 37.85.105

The department proposes to amend the Medicaid Youth Mental Health Fee Schedule to align policy with MAR Notice No. 37-719 and update the date from July 1, 2016 to January 1, 2017. It is necessary for the department to correct the fee schedule to align policy with MAR Notice No. 37-719.

Fiscal Impact

The proposed amendments do not have a fiscal impact.

SENIOR AND LONG TERM CARE DIVISION (SLTC), AMENDMENTS TO ARM 37.85.105

The department's SLTC is proposing amendments to ARM 37.85.105(4)(a).

ARM 37.85.105(4)(a)

Changes to ARM 37.85.105(4)(a) are proposed at this time to incorporate a correction to the Home and Community Based (HCBS) Waiver fee schedules for Specially Trained Attendant (STA) Licensed Practical Nurse (LPN) and Registered Nurse (RN). This correction would result in the STA-LPN fee schedule increasing from \$7.43 per unit to \$7.61 per unit and the STA-RN fee schedule increasing from \$8.81 per unit to \$8.96 per unit. The fee schedule correction was just discovered and a failure to update the rule would result in HCBS Waiver providers receiving a reduced reimbursement for STA-LPN and RN services. This could result in the loss of services providers which in turn may result in the lack of services available to individuals, enrolled in the waiver program. The department needs to update ARM 37.85.105(4)(a) to reflect the current HCBS Waiver reimbursement rate structure appropriated by the 64th Montana Legislature in House Bill (HB) 2. The effective date of the change will be January 1, 2017; however the Specially Trained Attendant (STA) Licensed Practical Nurse (LPN) and Registered Nurse (RN) will be reimbursed from July 1, 2016 forward.

Fiscal Impact

The fee schedule will be updated to include an increase in provider rates. This funding will impact all Medicaid HCBS waiver recipients and providers who utilize this service.

5. The following rule amendments are proposed to be effective January 1, 2017: ARM 37.85.104(1)(c), 37.85.105(2)(a), 37.85.105(2)(b), 37.85.105(3)(c), 37.85.105(3)(l), 37.85.105(3)(s), 37.85.105(3)(u), 37.85.105(3)(v), 37.85.105(4)(a), and 37.85.105(6)(a).

The department intends to apply these rules retroactively to July 1, 2016: ARM 37.85.105(3)(w) and 37.85.105(3)(x). A retroactive application of the proposed rules does not result in a negative impact to any affected party.

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., November 25, 2016.

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
Brenda K. Elias, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State October 17, 2016.