

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 37.40.307 pertaining to nursing )  
facility reimbursement )

TO: All Concerned Persons

1. On May 24, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-882 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 631 of the 2019 Montana Administrative Register, Issue Number 10.

2. The department has amended the above-stated rule as proposed.

3. 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: A commenter stated that the proposed nursing home Medicaid reimbursement rates for State Fiscal Year (SFY) 2020 do not cover the actual average cost of providing care to the residents, including the cost of complying with new federal regulations, general inflation, and increasing care needs of residents.

RESPONSE #1: ARM 37.40.307(2)(c) sets forth a non-exhaustive list of "[f]actors that could be considered" in the establishment of the statewide price for nursing facility services. Section 53-6-113, MCA, also sets forth a non-exhaustive list of factors, including the availability of appropriated funds, the department may consider in establishing the average statewide price. Actual cost of services is one of several factors the department may consider in establishing the average statewide price. In balancing the factors that may be considered, the department's primary consideration was the availability of appropriated funds and that the legislature funded provider rates increases of 0.91% for SFY 2020. The average statewide price proposed by the department appropriately balances the factors that may be considered.

COMMENT #2: A commenter stated that there are additional costs associated with high acuity Medicaid residents that the proposed rates do not address.

RESPONSE #2: The current reimbursement methodology adjusts a facility's rate based on the level of care the facility's residents require. If a facility's residents require a higher level of care, the rate is adjusted upward. This is referred to as the "acuity adjustment." The acuity adjustment is based on the facility's Medicaid average case mix index and the statewide average Medicaid case mix index.

Each nursing facility receives the same operating per diem rate, which is 80% of the statewide rate. The remaining 20% is the direct resident care component of the rate and is acuity-adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility, based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity. The statewide average acuity has gone from 1.0072 in 2016, to 1.0114 in 2017, to 1.0185 in 2018, to 1.0200 in 2019, and is currently at 1.0130. The current methodology adjusts 20% of the total rate for acuity, which was a desired characteristic when the price-based reimbursement system was first adopted to mitigate wide fluctuations in rates when acuity changes occurred in facilities.

COMMENT #3: A commenter recommends the SFY 2020 rates be increased to include additional reimbursement to address rate reductions from January 1, 2018.

RESPONSE #3: Given the availability of appropriated funds and legislative direction to increase provider rates by 0.91%, the department does not believe it is appropriate to calculate the SFY 2020 average statewide price based upon the prior rate reduction.

COMMENT #4: A commenter stated the notice of this proposed rulemaking is inadequate because it does not adequately describe how the average statewide price was calculated.

RESPONSE #4: The department respectfully disagrees. The notice meets the requirements of the Montana Administrative Procedure Act. The proposed rulemaking notice provides the public with notice of the proposed substantive rule changes in plain, easily understood language. The statement of reasonable necessity describes the factors considered by the department and basis for calculating the average statewide price. The department explained that the calculation included consideration of sufficient funding. This was a principal reason for the proposal to increase provider rates by 0.91% because the Legislature directed the department to increase provider rates by 0.91%.

COMMENT #5: A commenter asked what specific process was used to calculate the average statewide price and individual nursing facility reimbursement rates including how the department considered sufficient funding and access to services.

RESPONSE #5: The department considered the non-exhaustive list of factors set forth in 53-6-113, MCA. Sufficient funding was considered based upon funds appropriated by the legislature and legislative direction for provider rate increases of 0.91% for SFY 2020. Access to services was considered primarily by reviewing facility reports showing the percentage of beds paid by Medicaid and other payors as well as any changes in the number of beds in facilities and the number of open facilities.

COMMENT #6: A commenter indicates the department did not take into account the cost of providing services and quality of services. The commenter asks why these factors were not taken into account.

RESPONSE #6: The department considered the non-exhaustive list of factors set forth in 53-6-113, MCA, including cost of providing services and quality of services. The department also considered availability of appropriated funds and the legislature funded provider rate increases of 0.91% for SFY 2020.

COMMENT #7: A commenter suggests the department provide certain information as part of future rulemaking.

RESPONSE #7: The information provided in this rule notice is sufficient to enable comment on the proposed rule. The department will consider for future rule changes the commenter's suggestions.

4. The department intends to apply this rule amendment retroactively to July 1, 2019. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State June 25, 2019.