

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 37.40.307 and 37.85.105) PROPOSED AMENDMENT
pertaining to assisted living and)
nursing facility reimbursement)

TO: All Concerned Persons

1. On October 24, 2019, 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 October 17, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, 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:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) and (b) remain the same.

(c) The statewide price for nursing facility services will be determined each year through a public process. Factors that could be considered in the establishment of this price include the cost of providing nursing facility services, Medicaid recipients access to nursing facility services, and the quality of nursing facility care. The statewide price (average daily rate) for State Fiscal Year (SFY) 2020 is ~~\$204.30~~ \$208.06 effective October 1, 2019.

(d) The total payment rate available for the period ~~July 1, 2019~~ October 1, 2019, through June 30, 2020, will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361. Copies of the department's current nursing facility Medicaid reimbursement rates per facility are posted at <https://dphhs.mt.gov/sltc/csb/provider#28702384-nursing-facilities-and-swing-bed-services> and may be obtained from the Department of Public Health and Human

Services, Senior & Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the statewide median price as computed on ~~July 1, 2019~~ October 1, 2019. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (3) remain the same.

(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) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2019~~ October 1, 2019.

(b) through (e) remain the same.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) remains the same.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2019~~ October 1, 2019.

(c) and (6) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (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 department is proposing amendments to ARM 37.40.307 and 37.85.105 to increase assisted living and nursing facility reimbursement rates for services provided on or after October 1, 2019.

The department proposes these amendments because there are funds in the nursing home bed fee tax account that are designated for the purpose of supplementing Medicaid rates to nursing homes. The department has determined there are adequate funds in the bed fee tax account to meet the obligations of the proposed rate increase. The department proposes to increase the assisted living reimbursement rates concurrently with the nursing home rate increase and has determined there are adequate funds to meet the obligations of the proposed rate increase.

ARM 37.40.307

The proposed amendments to ARM 37.40.307(2) increase the statewide price (average daily rate) from \$204.30 to \$208.06, and make the change effective for services rendered on and after October 1, 2019. The proposed changes are necessary for the department to provide notice of the change to Medicaid nursing facility provider rates.

The proposed change to the average statewide price for state fiscal year (SFY) 2020 equates to a 1.84% average increase over the July 1, 2019, SFY 2020 price. The rate calculation includes consideration of sufficient funding and access to services.

Copies of the department's proposed nursing facility Medicaid reimbursement rates are posted at: <https://dphhs.mt.gov/sltc/csb/privider#28702384-nursing-facilities-and-swing-bed-services> and <http://medicaidprovider.mt.gov/proposedfs>.

ARM 37.85.105

The proposed amendments to ARM 37.85.105(4)(a) and ARM 37.85.105(5)(b) update two fee schedules to reflect an increase from \$77.05 to \$78.80 in the Medicaid daily rate for assisted living facilities. These rates are published in the fee schedules for the Big Sky Waiver in Senior and Long-Term Care and the SDMI waiver in Addictive and Mental Disorders Division (AMDD). The rate will be effective for services rendered on and after October 1, 2019.

Fiscal Impact

Nursing facility reimbursement will include an average increase of 1.84% over the July 1, 2019, SFY 2020 statewide average price. The total cost for the SFY 2020 nursing facility reimbursement increase is estimated at approximately \$3.7 million of combined state funds, federal funds, and patient contributions.

Anticipated days for SFY 2020 are 1,006,337 using estimates from SFY 2019 Medicaid paid days. Seventy nursing facility providers participated in the Medicaid nursing facility payment program, and approximately 4,100 recipients received services in nursing facilities under Medicaid.

Assisted living facility reimbursement will include a 2.27% increase over the SFY 2020 July 1, 2019 maximum daily Medicaid rate. Anticipated days for fiscal year (FY) 2020 both Senior and Long-Term Care Division and AMDD waivers are 271,246. The estimated increase is based on 75% of annual days. The cost of the increase will be approximately \$356,010 of combined state and federal funds.

5. 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: Gwen Knight, 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 1, 2019.

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

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

9. 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.

10. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Laura Smith, Deputy Director, for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State September 24, 2019.