

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 37.85.104, 37.85.105, and )  
37.85.106 pertaining to updating )  
Medicaid and non-Medicaid provider )  
rates, fee schedules, and effective )  
dates )

TO: All Concerned Persons

1. On May 15, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-916 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 846 of the 2020 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rules 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: The department received a comment asking for reimbursement rates to be reconsidered for air ambulance codes. The commenter stated that most insurance companies use the Medicare fee schedule as a baseline for reimbursement and that Montana Medicaid currently reimburses air ambulance providers at less than 40% of Medicare. The commenter stated that at the current rates offered, the transportation of Medicaid patients in Montana happens at a considerable loss to the providers willing to provide this transportation. The commenter expressed concern about the large discrepancy in what is provided for air ambulance services compared to other providers.

RESPONSE #1: Thank you for your comment. The department is currently researching the reimbursement rates for air ambulance service for Montana Medicaid.

COMMENT #2: A commenter requested the department open CDT code D1999, an unspecified preventative procedure. Opening the code will help dental providers to cover the costs associated with personal protective equipment (PPE) due to COVID-19. PPE includes use of N95 masks, face shields, and surgical caps and gowns. The commenter feels there is a significant and ongoing fee associated with these investments.

RESPONSE #2: Thank you for your feedback. The department will not be opening D1999 for reimbursement. Additional resources for providers can be found at

<https://banking.mt.gov/Financial-Resources-for-Montana-Residents-Impacted-by-COVID-19> and additional resources for grants can be found at <https://www.sba.gov/funding-programs/disaster-assistance>.

COMMENT #3: The department has received a request to add CDT code D0251, extra-oral posterior radiographic image. The commenter stated the reason this code is needed is because many patients are unable to tolerate intra-oral radiographic sensors required to make diagnostic images of dental structures. Age, patients with variable dental anatomy, and patients with severe infections are given as reasons patients are unable to tolerate the sensors. The commenter also stated having a less invasive procedure also would allow for less exposure to COVID-19.

RESPONSE #3: The department agrees with this comment and will add D0251, extra-oral posterior radiographic image.

COMMENT #4: A commenter expressed support for the proposed conversion factors and provider rate of reimbursement for optometric providers but stated the department continues to not follow 37-10-104, MCA. The commenter asserted that optometrists are not reimbursed for services in the same manner as other ocular practitioners rendering similar services, which the commenter asserted results in illegal discrimination in reimbursement for ocular practitioners. The commenter noted that the department includes a variety of non-physicians in the physician services category. The commenter stated the department is violating 37-10-104, MCA, because optometrists are not reimbursed the same amount as medical doctors or doctors of osteopathy for the same service.

RESPONSE #4: As the commenter is aware, this precise issue is being litigated in the Montana Eighth Judicial District Court, Cascade County, in the matter of Drs. Vincent, Benner and Hoch v. State of Montana, Montana Department of Public Health and Human Services, Cause No. CDV-19-0314, which was filed by plaintiffs in May 2019. The department has responded to this lawsuit, and the district court will decide the issue.

COMMENT #5: A commenter expressed disappointment that the targeted case management (TCM) rate for adults with severe and disabling mental illness (SDMI) or with substance use disorder (SUD) is not commensurate with the reimbursement rate for children's TCM service. The commenter stated that the proposed rate is a financial disincentive for providers to offer TCM for adults with SDMI or SUD.

RESPONSE #5: The TCM service for children with serious emotional disturbance was recently modified through a collaborative process with providers. A revised rate was established for TCM for children because the service now has additional requirements that providers must meet under the modified service. These additional requirements are not part of the adult SDMI and SUD targeted case management service.

COMMENT #6: A commenter stated that the reimbursement for the proposed Behavioral Health Group Homes (BHGH) is too low to adequately staff the home based on the staffing requirements. The commenter stated that the required staff appears to be equivalent to the HCBS Residential Habilitation home while the daily rate is significantly lower.

RESPONSE #6: BHGH staffing differs significantly from the HCBS Residential Habilitation mental health group home. BHGH only requires one awake staff 24 hours per day while the HCBS group home requires a 1:4 staffing ratio for 16 hours per day (during the day) and one awake staff for eight hours per day (overnight). Additionally, the reimbursement rate for BHGH was determined using the methodology agreed upon between the department and stakeholders. The department received feedback from stakeholders regarding the salaries required to hire and retain staff. Included in the calculation are the salaries provided from this feedback, benefits, overhead, and a productivity factor. This is consistent with the recommended rate methodology employed by the Centers for Medicare and Medicaid Services.

COMMENT #7: A commenter requested the department consider annual cost of living increases for reimbursement rates.

RESPONSE #7: The department thanks you for your comment. This rule is an implementation of a cost of living increase authorized by the Montana State Legislature.

COMMENT #8: A commenter requested the department make the reimbursement rate for PACT Community Maintenance Program (CMP) consistent with service requirements, as the reimbursement rate is weekly in the fee schedule while the service requirements are monthly.

RESPONSE #8: The department reviewed the weekly CMP rate and the service requirements. The service requirement for CMP is two PACT staffing meetings per month for each member, documented through a progress note and contacts with the member as medically necessary. The department understands the commenter's concerns and therefore will adjust the unit for this service to read "day" and will define day for this service as a member contact or member staffing at a PACT team meeting. This will continue to allow the provider the flexibility to individualize the member's services while billing for each of the four reimbursable activities at the time of the provision of the service.

4. These rule amendments are effective July 1, 2020.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

/s/ Marie Matthews for Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State June 16, 2020.