

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

TO: All Concerned Persons

1. On June 4, 2020, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at:

<https://mtgov.zoom.us/j/96951987925?pwd=OWdKVfJzYnBaZm9YZk5OeXZ1d1o0dz09>, meeting ID: 969 5198 7925, password: 491848;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 969 5198 7925, password: 491848; find your local number: <https://mt-gov.zoom.us/u/ajQrLXmNG>; or

(c) Join by Skype for Business <https://mt-gov.zoom.us/skype/96951987925>.

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 May 28, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~July 1, 2019~~ July 1, 2020.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~July 1, 2019~~ July 1, 2020.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~July 1, 2019~~ July 1, 2020.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~October 1, 2019~~ July 1, 2020.

(2) remains 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 ~~83 Federal Register 226, page 59452 (November 23, 2018)~~ 84 Federal Register 221, page 62568 (November 12, 2019) effective ~~January 1, 2019~~ January 1, 2020 which is adopted and incorporated by reference. Procedure codes created after January 1, 2020 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, 2020~~ July 1, 2020. The conversion factor for physician services is ~~\$38.46~~ \$39.51. The conversion factor for allied services is ~~\$23.97~~ \$24.66. The conversion factor for mental health services is ~~\$23.36~~ \$23.40. The conversion factor for anesthesia services is ~~\$30.03~~ \$30.57.

(c) remains the same.

(d) The BCBA/BCBA-D services policy adjuster is 105% effective July 1, 2020.

~~(d)~~ (e) The payment-to-charge ratio is effective ~~July 1, 2018~~ July 1, 2020 and is ~~47%~~ 45.2% of the provider's usual and customary charges.

(e) through (g) remain the same but are renumbered (f) through (h).

~~(h)~~ (i) Optometric services receive a ~~117.26%~~ 117.50% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2019~~ July 1, 2020.

(i) remains the same but is renumbered (j).

~~(j)~~ (k) Reimbursement for vaccines described at ARM 37.86.105 is effective ~~July 1, 2019~~ July 1, 2020.

(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) remains the same.

(b) The outpatient hospital services fee schedules including:

- (i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in Federal Register Volume 83, Issue 225, page 58818 (~~November 21, 2018~~) 84, Issue 218, page 61142 (November 12, 2019), effective ~~January 1, 2019~~ January 1, 2020, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;
- (ii) remains the same.
- (iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~37.30%~~ 48%; and
- (iv) remains the same.
- (c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2020~~ July 1, 2020.
- (d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2019~~ 2020 resulting in a dental conversion factor of ~~\$34.09~~ \$34.71 and fee schedule is effective ~~January 1, 2020~~ July 1, 2020.
- (e) remains the same.
- (f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~July 1, 2019~~ July 1, 2020:
 - (i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$2.32~~ \$2.23 and the maximum is ~~\$15.14~~ \$15.42;
 - (ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$2.32~~ \$2.23 and the maximum is ~~\$13.12~~ \$13.36; or
 - (iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~\$2.32~~ \$2.23 and the maximum is ~~\$11.10~~ \$11.30.
- (g) remains the same.
- (h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be \$21.32 for the first vaccine and ~~\$14.08~~ \$14.34 for each additional administered vaccine, effective ~~July 1, 2019~~ July 1, 2020.
- (i) remains the same.
- (j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2019~~ July 1, 2020.
- (k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2020~~ July 1, 2020, 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, 2020~~ July 1, 2020. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2020~~ July 1, 2020.
- (l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.
- (m) remains the same.
- (n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.
- (o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2019~~ July 1, 2020.
- (p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2019~~ July 1, 2020.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2020~~ July 1, 2020.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2019~~ July 1, 2020.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2019~~ July 1, 2020.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2020~~ July 1, 2020.

(u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2019~~ July 1, 2020.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2020~~ July 1, 2020.

(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, 2019~~ July 1, 2020.

(x) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2019~~ July 1, 2020.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2019~~ July 1, 2020.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2020~~ July 1, 2020.

(aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2019~~ July 1, 2020.

(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~~ July 1, 2020.

(b) The home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2019~~ July 1, 2020.

(c) The personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2019~~ July 1, 2020.

(d) The self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2019~~ July 1, 2020.

(e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2019~~ July 1, 2020.

(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) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2019~~ July 1, 2020.

(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~~ July 1, 2020.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~October 1, 2019~~ July 1, 2020.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2019~~ July 1, 2020.

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

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

37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains the same.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective ~~March 1, 2020~~ July 1, 2020, for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) through (3) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-113, 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.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement which are necessary for the purposes of the Medicaid program. In establishing the proposed rates of reimbursement, the department considered as primary factors the availability of funds appropriated by the Montana Legislature during the 2019 regular legislative session, the actual cost of services, and the availability of services.

The purpose of the proposed rule amendments is to:

- (1) incorporate legislatively appropriated provider rate increases with an effective date of July 1, 2020;
- (2) incorporate the July 1, 2020 RBRVS changes;
- (3) incorporate the physician conversion factor as provided in 53-6-125, MCA;
- (4) revise fee schedules;
- (5) update federal register references for the RBRVS and Outpatient

Prospective Payment System payment methodologies; and
(6) update the outpatient cost-to-charge ratio.

Proposed Provider Rate Increases

The department is proposing provider rate increases effective July 1, 2020, for most Medicaid and non-Medicaid provider rates in accordance with the funding appropriated by the Montana Legislature during the 2019 regular session.

This rule will implement the legislatively appropriated provider rate increases for the Big Sky Waiver program, effective July 1, 2020. This fee increase will include a 1.83% increase in provider rates for the Big Sky Waiver services with the exception of transportation miles and assisted living facility residential habilitation services. The rate for transportation miles has been set in accordance with the State Plan Medicaid rate. For both the Big Sky Waiver and the Severe and Disabling Mental Illness waiver, the rate for assisted living facility residential habilitation services remains unchanged from the October 1, 2019, rate increase provided under MAR Notice No. 37-898.

Resource-Based Relative Value Scale (RBRVS) Methodology Summary

Many Montana Medicaid providers' rates are established through the resource-based relative value scale (RBRVS) model. RBRVS is used nationwide by most health plans, including Medicare and Medicaid to establish Montana Medicaid provider rates. The relative value unit component of RBRVS is revised annually by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA). The department annually proposes to amend ARM 37.85.105 to adopt the recently revised relative value units (RVUs). An RVU is a numerical value assigned to each medical procedure. RVUs are based on physician work, practice expense, and malpractice insurance expenses, and RVUs express the relative effort and expense expended to provide one procedure compared with another. In the annual revision of RVUs, CMS and the AMA add RVUs for new procedures and increase or decrease RVUs of particular procedures, depending on the factors listed above.

"Conversion factor" (CF) means a dollar amount by which RVUs are multiplied to establish the RBRVS fee for a service. The department annually calculates conversion factors for allied services, mental health services, and anesthesia services taking into consideration the changes to RVUs and appropriations.

For allied health services, mental health services, and anesthesia services, the conversion factors were calculated to provide for an overall increase of 1.83%. In addition, the optometric rate of reimbursement was increased to 117.50% to increase the optical service reimbursement by 1.83%.

A BCBA and BCBA-D services policy adjustor of 105% is proposed to increase reimbursement for autism state plan services by 1.83%.

Physician Conversion Factor

Section 53-6-125, MCA, directs the department to increase the physician's conversion factor by the consumer price index (CPI) for medical care for the previous year.

For the fiscal year beginning July 1, 2020, 53-6-125, MCA, directs the department to reduce general fund expenditures for physicians by \$400,000 to fund the Health Information Exchange. After applying the federal match, the total expenditure reduction calculated to \$1,150,086.

The changes to the physician conversion factor were completed in two steps, first applying the annual CPI increase and then applying the reduction associated with HB 669. These changes were applied multiplicatively resulting in a proposed physician conversion factor of \$39.51.

Fee Schedules

The department is proposing the adoption of fee schedules effective July 1, 2020. The fee schedules incorporate changes due to the proposed amendments within this rulemaking.

The department has posted proposed fee schedules at <http://medicaidprovider.mt.gov/proposedfs>.

Federal Register Updates

Effective July 1, 2020, the department is proposing to adopt the January 1, 2020, federal register references for the RBRVS and Outpatient Prospective Payment System reimbursement methodologies. These updates are necessary to incorporate the most up-to-date changes made by CMS.

Outpatient Cost-to-Charge Ratio

The Outpatient Cost-to-Charge ratio is proposed to increase to 48% from 37.50%. This percentage is calculated utilizing the average cost-to-charge ratio from the Cost Reports for Prospective Payment System Hospitals.

Fiscal Impact

Provider type	SFY 2021 Budget Impact (State Funds)	SFY 2021 Budget Impact (Federal Funds)	SFY 2021 Budget Impact (Total Funds)	Active Provider Count
Ambulance	40,301	147,608	187,909	196

Audiologist	1,040	2,506	3,546	76
Targeted Case Management - Mental Health	65,253	147,086	212,339	21
Targeted Case Management - High Risk Pregnancy	553	1,138	1,691	18
Chemical Dependency Clinic	51,748	311,853	363,601	46
Chiropractor	239	447	686	112
Community First Choice	203,763	510,442	714,205	70
Dental	346,417	920,263	1,266,680	648
Denturist	13,877	50,915	64,792	17
EPSDT	4,540	10,110	14,650	146
Hearing Aid Dispenser	1,242	3,003	4,245	35
Home & Comm Based Services	43,182	80,885	124,067	528
Home Health Agency	3,200	5,924	9,124	25
Home Infusion Therapy	8,943	26,471	35,414	17
Independent Diagnostic Testing Facility	5,384	20,694	26,078	23
Laboratory	62,968	319,040	382,008	170
Licensed Professional Counselor	123,538	376,370	499,908	966
Mental Health Center	160,408	362,376	522,784	29
Mid-Level Practitioner	120,009	272,259	392,268	5,101
Mobile Imaging Service	38,002	339,542	377,544	1
Nutritionist/Dietitian	644	1,419	2,063	114

Occupational Therapist	25,868	53,766	79,634	262
Optician	727	2,220	2,947	29
Optometrist	32,006	100,578	132,584	236
Orientation and Mobility	1,228	2,296	3,524	4
Personal Care Agency	3,324	6,701	10,025	70
Personal Care Agency Adult MH	109	207	316	70
Pharmacy Dispensing Fee	143,755	525,118	668,873	455
Physical Therapist	33,639	132,746	166,385	883
Physician	471,769	1,623,368	2,095,137	12,260
Podiatrist	7,082	26,215	33,297	76
Private Duty Nursing Agency	30,165	56,292	86,457	4
PRTF	98,943	198,107	297,050	19
Psychiatrist	26,522	83,017	109,539	200
Psychologist	8,220	26,157	34,377	319
Social Worker	76,607	238,986	315,593	795
Speech Pathologist	24,830	49,073	73,903	253
Personal and Commercial Transportation	1,589	3,502	5,091	13
Therapeutic Family Care	24,104	48,940	73,044	14
Therapeutic Group Home	138,954	265,507	404,461	21
Transportation Non-Emergency	89	174	263	7

The proposed rulemaking is estimated to affect 237,314 Medicaid members. In addition, it will impact the provider populations outlined in the tables above.

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: Heidi Clark, 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 dphslegal@mt.gov, and must be received no later than 5:00 p.m., June 12, 2020.

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 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/ 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 May 5, 2020.