

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, 37.40.326, and)
37.40.330 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On May 29, 2020, the Department of Public Health and Human Services published MAR Notice No. 37-919 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 949 of the 2020 Montana Administrative Register, Issue Number 10.

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: Several commenters expressed their support for the proposed rule changes.

RESPONSE #1: The department thanks the commenters for their support.

COMMENT #2: A commenter expressed the benefits of including Joint Commission accreditation and provided recommendations for a quality-based program.

RESPONSE #2: The department thanks the commenter for their support and recommendations.

COMMENT #3: A commenter stated that the quality component is based on the total funding available for quality, but the proposed rules do not specify the available funding. The commenter recommends that the proposed rules include the amount of funding for the quality component.

RESPONSE #3: The amount of available funding was included in the quality component funding allocation spreadsheet, which has been publicly available during the rulemaking process at <https://medicaidprovider.mt.gov/26#1875810696-proposed-rule-changes>.

COMMENT #4: A commenter states that the quality component mentions a first and second allocation. The commenter is concerned that the rule is not clear on how and when the second allocation will be distributed.

RESPONSE #4: Both the first and second allocation are included in the reimbursement rate along with the flat rate component. The second allocation is used to ensure that the full amount of funds allocated for the quality component are included in the reimbursement rate. Since not all providers have a 3 Star or higher quality rating, the second allocation is the amount of funds that could have gone to those facilities. These funds are reallocated based on the percentage of funds each facility received in the first allocation. For example, if a facility has a 4 Star rating they would receive \$2.25/day in the first allocation but with the funds from those facilities without a 3 Star or higher rating the second allocation provides the 4 Star facility with an additional \$0.94/day for a total of \$3.19/day quality component. Their reimbursement rate is \$211.25 ($208.06 + 3.19 = 211.25$).

COMMENT #5: A commenter acknowledged that the Add-On Fee Schedule will help, but stated that the proposed nursing home Medicaid reimbursement rates for State Fiscal Year (SFY) 2021 do not cover the actual average cost of providing care to the residents, including the cost of high acuity Medicaid Residents, general inflation, and increasing care needs of residents.

RESPONSE #5: Section 53-6-113, MCA, sets forth a non-exhaustive list of factors the department may consider in establishing rates for reimbursement. These factors include: (1) the availability of appropriated funds; (2) actual cost of services; (3) quality of services; (4) professional knowledge and skills necessary for the delivery of services; and (5) availability of services. The department considered each of these factors in setting the proposed reimbursement rate and believes the rate has been established in a manner that appropriately balances these factors.

COMMENT #6: A commenter expressed their strong support for the proposed inclusion of rate add-ons for residents with significant needs that go beyond average care, but stated the available funding is not made clear in the rule proposal.

RESPONSE #6: The department thanks the commenter for their support. There is not an allocation of funds to all providers so the amount of funding will be based on the number of providers who seek add-ons and the combination of add-ons.

COMMENT #7: A commenter stated the rule is unclear on how the add-on fee schedule will work.

RESPONSE #7: ARM 37.40.330(2)(a) and (b), which the department is not proposing to change, address the process for receiving payment.

4. The department intends to apply these rules retroactively to July 1, 2020. A retroactive application of the proposed rules 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 July 14, 2020.