BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.40.307, 37.40.326, and 37.40.330 pertaining to nursing facility reimbursement	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 18, 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://mt-gov.zoom.us/j/94188970956?pwd=ak51d2NiZEtEOWZ5S1d0alRUYlBDUT09, meeting ID: 941 8897 0956, password: 240501;

(b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 941 8897 0956, password: 240501; find your local number: https://mt-gov.zoom.us/u/ajQrLXmNG; or

(c) Join by Skype for Business https://mt-gov.zoom.us/skype/94188970956.

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 June 11, 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:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective ~~July 1, 2001~~ July 1, 2020, and in subsequent rate years, ~~nursing facilities will be reimbursed~~ the reimbursement rate for each nursing facility will be determined using ~~a price-based reimbursement methodology~~ the flat rate component specified in (2)(a) and the quality component specified in (2)(b). ~~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) The ~~operating~~ flat rate component is the same per diem rate for each nursing facility and will be determined each year through a public process. ~~It is set~~

~~at 80% of the statewide price for nursing facility services.~~ Factors that could be considered in the establishment of this flat rate component include cost of providing nursing facility services and Medicaid recipient access to nursing facility services. The flat rate component for state fiscal year (SFY) 2021 is $208.06.

(b) The ~~direct resident care~~ quality component of each nursing facility's rate is ~~20% of the overall statewide price~~ based on the 5-star rating system for nursing facility services calculated by the Centers for Medicare and Medicaid Services (CMS). ~~It is adjusted for the acuity of the Medicaid residents served in each facility. The acuity adjustment increases or decreases the direct resident care component in proportion to the relationship between each facility's Medicaid average case mix index and the statewide average Medicaid case mix index.~~ It is set for each facility based on their average 5-star rating for staffing and quality. Facilities with an average rating of 3 to 5 stars will receive a quality component payment. The funding for the quality component payment will be divided by the total estimated Medicaid bed days to determine the quality component per Medicaid bed day. The quality component per bed day is then adjusted based on each facility's 5-star average of staffing and quality component scores. A facility with a 5-star average of staffing and quality component scores will receive 100%, a 4-star average will receive 75%, a 3-star average will receive 50%, and 1- and 2-star average facilities will receive 0% of the quality component payment. Funds unused by the first allocation round will be reallocated based on the facility's percentage of unused allocation against the available funds.

~~(i) The Medicaid average case mix index for each facility to be used in rate setting will be the simple average of each facility's four Medicaid case mix indices calculated for the periods of February 1 of the current year and November 1, August 1 and May 1 of the year immediately preceding the current year. The statewide average Medicaid case mix index will be the weighted average of each facility's four quarter average Medicaid case mix index to be used in rate setting.~~

~~(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 $208.06 effective October 1, 2019.~~

~~(d)~~ (c) The total payment rate available for the period ~~October 1, 2019~~ July 1, 2020, through ~~June 30, 2020~~ June 30, 2021, 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~~ https://medicaidprovider.mt.gov/26#1875810541-fee-schedules---nursing-facility-medicaid-rates 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~~ flat rate component as computed on ~~October 1, 2019~~ July 1, 2020.

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

37.40.326 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) This rule specifies the methodology the department will use to determine the interim per diem rate for in-state providers, other than ICF/IID providers, which 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 or following a change in provider as defined in ARM 37.40.325.

(a) remains the same.

(b) Effective ~~July 1, 2001~~ July 1 2020, and thereafter, the rate paid to newly constructed facilities or to facilities participating in the Medicaid program for the first time will be the ~~statewide average nursing facility~~ flat rate component specified under ~~the price-based reimbursement system. The direct care component of the rate will not be adjusted for acuity, until such time as there are three or more quarters of Medicaid CMI information available at the start of a state fiscal year. Once the CMI information is available the price-based rate will include the acuity adjustment as provided for in~~ ARM 37.40.307(2)(a) combined with the quality component specified under ARM 37.40.307(2)(b).

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) remains the same.

(2) The department may, in its discretion, pay as a separately billable item, a per diem nursing services increment for services provided to a ventilator dependent resident, trach dependent resident, behavior related needs resident, wound care resident, bariatric care resident, and residents with traumatic brain injury (TBI) diagnoses if the department determines that extraordinary staffing by the facility is medically necessary based upon the resident's needs.

(a) through (c) remain the same.

(3) The department will reimburse for all Montana Medicaid covered services delivered via telemedicine/telehealth originating site fees as long as such services are medically necessary and clinically appropriate for delivery via telemedicine/telehealth, comply with the guidelines set forth in the applicable Montana Medicaid provider manual, and are not a service specifically required to be face-to-face.

(3) through (10) remain the same but are renumbered (4) through (11).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.40.307, 37.40.326, and 37.40.330 to update nursing facility reimbursement methodology and separately billable items.

ARM 37.40.307

The proposed amendment to ARM 37.40.307 updates the language for nursing facility reimbursement methodology. The proposed amendment is necessary to provide notice of changes between the current reimbursement methodology and the new reimbursement methodology necessitated by changes to the Centers for Medicare and Medicaid Services (CMS) Minimum Data Set (MDS) requirements.

The current methodology utilizes portions of the MDS that will no longer be collected as the result of changes to CMS regulations. See 83 Fed. Reg. 39162. The new methodology was developed with providers and associations through a workgroup convened by the department and uses a flat rate cost-based system combined with a quality component payment based on the 5-star rating system by CMS. The department is proposing to set the flat rate component for state fiscal year (SFY) 2021 at $208.06, which is the same rate as the former statewide average price.

ARM 37.40.326

The proposed amendment to ARM 37.40.326 updates the language for nursing facility reimbursement methodology for newly constructed facilities and facilities participating in the Medicaid program for the first time. The amendment is necessary to conform with the proposed changes to nursing facility reimbursement methodology in ARM 37.40.307.

ARM 37.40.330

The proposed amendment to ARM 37.40.330(2) adds language to include add-on payments and criteria for trach dependent residents, behavior related needs residents, wound care residents, bariatric care residents, and residents with traumatic brain injury (TBI). These add-ons typically require greater staff time and resources than what is covered by the per diem rate. Allowing add-on payments for these services will increase the ability of nursing facilities to accept patients who need the additional services.

The proposed amendment to ARM 37.40.330(3) adds rule language allowing and defining telemedicine/telehealth originating site fee reimbursement. The addition of telemedicine/telehealth will improve nursing facility patient access to health care.

Fiscal Impact

The proposed rule changes have an estimated fiscal impact of $6 million in combined state and federal funds. Sixty-nine nursing facility providers participated in the Medicaid nursing facility payment program and approximately 4,100 recipients received services in nursing facilities under Medicaid.

The department intends to retroactively apply these proposed amendments to July 1, 2020.

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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 26, 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 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/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State May 19, 2020.