

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 37.86.1802 pertaining to ) PROPOSED AMENDMENT  
durable medical equipment order and )  
record requirement update )

TO: All Concerned Persons

1. On July 16, 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 rule. 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/92888851955>, meeting ID: 928 8885 1955;
- (b) Dial by telephone +1 406 444 9999 or +1 646 558 8656, meeting ID: 928 8885 1955; find your local number: <https://mt-gov.zoom.us/u/ad6KWsYnZL>; or
- (c) Join by Skype for Business <https://mt-gov.zoom.us/skype/92888851955>.

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 July 10, 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](mailto:dphhslegal@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies will be limited to items included on the department's fee schedule delivered in the most appropriate and cost effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) and as provided in ARM 37.85.105(3). For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare, coverage will be determined by the department and published on the department's fee schedule in accordance with ARM 37.86.1807. The items

must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) ~~The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies.~~ A prescription or order must include the member's name or Medicaid identification number; order date; general description of the item or HCPCS code or HCPCS code narrative, or a brand name and model number; quantity to be dispensed, if applicable; treating practitioner's name or national provider identifier; and treating practitioner's signature. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) must follow the Medicare criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual as provided in ARM 37.85.105(3). A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(ii) If applicable, an order for durable medical equipment must list separately all concurrently ordered options, accessories, or additional features that are separately billed or require an upgrade code.

(iii) If applicable, an order for medical supplies must include all concurrently ordered supplies that are separately billed, listing each separately.

(b) through (7) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, ~~53-6-141~~, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.1802 pertaining to written order/prescription requirements to ensure that the department's requirements mirror Medicare's Standard Written Order (SWO) requirements, which the department routinely follows to offer consistency to providers.

Effective January 1, 2020, Medicare changed the Durable Medical Equipment, Prosthetic/Orthotics, and Supplies (DMEPOS) Order Requirements to help reduce supplier and provider burden. A detailed written order will no longer be required for durable medical equipment. Medicare has posted new standard written order requirements. Because Montana Healthcare Programs follow the same order/prescription requirements as Medicare for DMEPOS, as outlined in chapters 3

and 4 of the Region D Medicare Supplier Manual, the department proposes to update the requirements in ARM 37.86.1802 to ensure that the department's requirements mirror Medicare's SWO requirements to continue to offer consistency to providers.

The department has taken the necessary steps of researching and monitoring the exact Medicare DMEPOS order/prescription requirements to ensure that providers are given up-to-date criteria and policies. The department will update the Montana Healthcare Programs DMEPOS Provider Manual and post provider notices to the provider website and newsletters to ensure providers are informed of this significant change.

### Fiscal Impact

This proposed rule amendment will not result in an impact to the general fund or affect federal funding.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 24, 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 rule 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/ 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.