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DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-522.1

Summary

Amendment of ARM 37.40.830 pertaining to Hospice Reimbursement

Hearing Date and Time

Monday, May 19, 2025, at 10:00 a.m.

Virtual Hearing Information

Join Zoom Meeting

<https://mt-gov.zoom.us/j/84517576036?pwd=8wemUsdYgKcrShwDzbm0JKF1qx0WoS.1>

Meeting ID: 845 1757 6036 and Password: 994617

Dial by Telephone +1 646 558 8656, Meeting ID: 845 1757 6036 and Password: 994617

Find your local number: <https://mt-gov.zoom.us/j/84517576036?pwd=8wemUsdYgKcrShwDzbm0JKF1qx0WoS.1>

Comments

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 using the contact information listed below. Comments must be received by Friday, May 23, 2025, at 5:00 p.m.

Accommodations

The department 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. Requests must be made by Monday, May 5, 2025, at 5:00 p.m.

Contact

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Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

37.40.830 HOSPICE, REIMBURSEMENT

- (1) Medicaid payment for covered hospice care will be made in accordance with the specific categories of covered hospice care and the payment amounts and procedures established by Medicare under 42 CFR 418.301 through 418.312. The specific categories of covered hospice care include:
 - (a) routine home care day;
 - (b) continuous home care day;
 - (c) inpatient respite care day;
 - (d) general inpatient care day; and
 - (e) service intensity add-on.
- (2) Hospice Routine Home Care (RHC) level of care days will be paid at one of two RHC rates. RHC per-diem payment rates for the RHC level of care will be paid depending on the timing of the day within the patient's episode of care. Days 1 through 60 will be paid at the RHC "High" rate while all other days will be paid at the RHC "Low" rate.
- (3) The room and board rate to be paid a hospice for a Medicaid beneficiary who resides in a nursing facility will be the Medicaid rate established by the department

in ARM 37.40.307 for the individual facility minus the amount the beneficiary pays toward their own cost of care. Payment for room and board will be made to the hospice and, in turn, the hospice will reimburse the nursing facility. General inpatient care or hospice respite care in a nursing facility will not be reimbursed directly by the Medicaid program when a Medicaid recipient elects the hospice benefit payment. Under such circumstances payment will be made to the hospice in accordance with this rule.

- (a) In this context, the term "room and board" includes performance of personal care services, including assistance in the activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.
- (4) The following services performed by hospice physicians are included in the rates described in (1)(a) through (1)(d):
 - (a) general supervisory services of the medical director; and
 - (b) participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.
- (5) For services not described in (4), Medicaid will pay the hospice for those physician services furnished by hospice employees or under arrangements with the hospice in accordance with ARM 37.86.101, 37.86.104, and 37.86.105. Reimbursement for these physician services is included in the amount subject to the hospice limit described in (6). Services furnished voluntarily by physicians are not reimbursable.
- (6) Services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are not considered hospice services and are not included in the amount subject to the hospice payment limit.
- (7) Medicaid reimbursement to a hospice in a cap period is limited to a cap amount established using Medicare principles.
- (8) The department will notify the hospice of the determination of program reimbursement at the end of the cap year.
- (9) Payments made to a hospice during a cap period that exceed the cap amount are overpayments and must be refunded.
- (10) The department adopts and incorporates by reference the Hospice Rates FFY~~24~~25 fee schedule, effective October 1, ~~2023~~ 2024. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

Authorizing statute(s): 53-6-113, MCA

Implementing statute(s): 53-6-101, MCA

Reasonable Necessity Statement

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update the Medicaid hospice reimbursement fee schedule, effective October 1, 2024. This new fee schedule is being proposed in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare & Medicaid Services (CMS) under the final Medicare hospice rule published on August 6, 2024, and effective October 1, 2024. 89 FR 64202 (Aug. 6, 2024).

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 2.9%, as computed and published by CMS, which will apply to providers in all 56 counties. Medicare hospice rates for Montana providers are also affected by a wage index applied geographically by county. The 2025 wage index has increased for Carbon, Stillwater, Golden Valley, and Yellowstone Counties by approximately 4%. The wage index for Cascade County has increased by 9%. Missoula County's wage index has increased by approximately 0.4%. In addition, the fiscal year (FY) 2025 wage index shows Lewis and Clark, Jefferson, Broadwater, and Gallatin Counties are now considered urban areas versus their previous status as rural areas under the FY 2024 wage index. Gallatin County will experience an increase in the wage index of approximately 16%, and Lewis and Clark, Broadwater, and Jefferson Counties will experience a decrease in the wage index of approximately 0.03%. The remainder of the Montana counties are subject to the rural index rate which increased by approximately 7%. Two hospice providers will see a hospice reimbursement rate decrease for failure to comply with the federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at <https://medicaidprovider.mt.gov/proposedfs>.

The proposed rule amendment is necessary to pay Medicaid providers according to the current Medicare fee schedule effective October 1, 2024. Failure to amend the rule will result in a deficient state hospice reimbursement rate from the current federal rate, which would result in underpayment to hospice providers and introduce an inability for the state to comply with federal requirements pertaining to hospice providers.

Fiscal Impact

The proposed rule amendment will have a fiscal impact on the Hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). The projected budget for FY 2025 is \$3.6 million, which reflects an increase of 5.8% from the FY 2024 projected budget of \$3.4 million.

In FY 2024, approximately 204 Medicaid recipients received the hospice benefit. The majority of the Medicaid hospice program's budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

Effective Date

The department intends to apply the increase in hospice rates retroactively to claims for services provided on or after October 1, 2024. Any decreases in hospice rates would not be applied retroactively, but would be effective for claims for services provided on or after the adoption of the amendments proposed in this rulemaking notice.

Interested Persons

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 listed in this notice.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Small Business Impact

Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

Medicaid Performance-Based Statement

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.

Rule Reviewer

Robert Lishman

Approval

Charles T. Brereton, Director
Department of Public Health and Human Services