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DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-98.1

Summary

Amendment of ARM 37.86.2901 and 37.86.2907 pertaining to inpatient rehabilitation facilities

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Hearing Date and Time

Thursday, May 15, 2025, at 9:00 a.m.

Virtual Hearing Information

Join Zoom Meeting at: https://mt-gov.zoom.us/j/89311957068pwd=UVKqbbeDSAbgBg5TTnofMLdQm0PhcU.1

meeting ID: 893 1195 7068, and password: 374079

Dial by telephone: +1 646 558 8656, meeting ID: 893 1195 7068, and password: 374079.

Find your local number: https://mt-gov.zoom.us/u/kcOVXcXh0b.

Comments

Comments may be submitted using the contact information 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 Thursday, May 1, 2025, at 5:00 p.m.

Contact

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Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) "Acute care psychiatric hospital" means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of inpatient psychiatric care for persons under the age of 21 and licensed as a hospital by:

(a) the department; or

(b) an equivalent agency in the state in which the facility is located.

(2) "Administratively necessary days" or "inappropriate level of care services" means those services for which alternative placement of a client is planned and/or effected and for which there is no medical necessity for acute level inpatient hospital care.

(3) "All patient refined diagnosis related groups (APR-DRGs)" means DRGs that classify each inpatient case based on claim information such as diagnosis, procedures performed, client age, client sex, and discharge status.

(4) "Bad debt" means inpatient and outpatient hospital services provided in which full payment is not received from the client or from a third party payor, for which the provider expected payment and the persons are unable or unwilling to pay their bill. Bad debts may be for services provided to clients who have no health insurance or clients who are underinsured and are net of payments (the amount

that remains after payment) made toward these services. For the purpose of uncompensated care, bad debt is measured on the basis of revenue forgone, at full established rates, and bad debt does not include either provider discounts or Medicare bad debt.

(5) "Base price" means a dollar amount, including capital expenses, that is reviewed by the department each year to allow for appropriation neutrality.

(6) "Border hospital" means a hospital located outside Montana, but no more than 100 miles from the border.

(7) "Capital related cost" means a cost incurred in the purchase of land, buildings, construction, and equipment as provided in 42 CFR 413.130.

(8) "Center of Excellence" means a hospital specifically designated by the department as being able to provide a higher level multi-specialty of comprehensive care and meets the criteria in ARM 37.86.2947(3).

(9) "Charity care" means free or discounted inpatient and outpatient hospital services provided to persons who meet the hospital's eligibility criteria for financial assistance and are unable to pay for all or a portion of the services. ~~in which hospital policies determine the client is unable to pay and the hospital did not expect to receive full reimbursement.~~ Charity care eligibility is determined pursuant to a hospital's policies. ~~results from a provider's hospital's policy to provide health care services free of charge (or where only partial payment is expected) to individuals who meet certain financial criteria.~~ For the purpose of uncompensated care, charity care is measured on the basis of revenue forgone, at full established rates. Charity care does not include contractual write-offs.

(10) "Clinical trials" means trials that are directly funded or supported by centers or cooperating groups funded by the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare ~~and~~ & Medicaid Services (CMS), the Department of Defense (DOD), or the Department of Veterans Affairs ~~Administration~~ (VA).

(11) "Cost-based hospital" means a licensed acute care hospital that is reimbursed on the basis of allowable costs.

(12) "Cost outlier" means an additional payment for unusually high cost cases that exceeds the cost outlier thresholds as set forth in ARM 37.86.2916.

(13) "Critical access hospital" means a limited-service rural hospital licensed by the Montana Department of Public Health and Human Services.

(14) "Direct nursing care" means the care given directly to the client ~~which~~ that requires the skills and expertise of a~~n~~ registered nurse (RN) or licensed practical nurse (LPN).

(15) "Discharging hospital" means a hospital, other than a transferring hospital as described in (45), that formally discharges an inpatient. Release of a client to another hospital, as described in (39), or a leave of absence from the hospital, is not ~~will not be~~ recognized as a discharge. A client who dies in the hospital is considered a discharge.

(16) "Disproportionate share hospital" means a hospital serving a disproportionate share of low income clients as defined in section 1923 of the Social Security Act.

(17) "Disproportionate share hospital specific uncompensated care" means the costs of inpatient and outpatient hospital services provided to clients who have no health insurance or source of third party coverage.

(18) "Distinct part psychiatric unit" means a psychiatric unit of an acute care general hospital that meets the requirements of 42 C.F.R. ~~part~~ § 412.27. ~~(2008).~~

(19) "Distinct part rehabilitation unit" means a rehabilitation unit of an acute care general hospital that meets the requirements in 42 C.F.R. §§ 412.25 and 412.29.

(20) "Early elective delivery" means either a nonmedically necessary labor induction or cesarean section that is performed prior to 39 weeks and 0/7 days gestation.

(21) "Experimental/investigational service" means a noncovered item or procedure considered experimental and/or investigational by the U.S. Department of Health and Human Services or any other appropriate federal agency.

(22) "Graduate medical education~~"~~ (GME)" means a postgraduate primary care residency program approved by the Accreditation Council for Graduate Medical Education (ACGME) offered by an eligible in-state hospital for the purpose of providing formal hospital-based training and education under the supervision of a licensed medical physician.

(23) "Hospital Acquired Condition (HAC)" means a condition that occurs during an inpatient hospital stay and results in a high cost or high volume of care or both; results in a claim being assigned to a diagnosis related group (DRG) that has a higher payment when present as a secondary diagnosis; and could have reasonably been prevented through the application of evidence-based guidelines as defined in ~~S~~section 5001(c) of the Deficit Reduction Act of 2005.

(24) "Hospital reimbursement adjustor (HRA)" means a payment to a Montana hospital as specified in ARM 37.86.2928 and 37.86.2940.

(25) "Hospital resident" means a person ~~client~~ who is unable to be cared for in a setting other than the acute care hospital as provided in ARM 37.86.2921.

(26) "Inpatient" means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. A person generally is considered an inpatient if formally admitted as an inpatient with an expectation that the ~~client~~ person will remain in the hospital for more than 24 hours. The

physician or other practitioner is responsible for deciding whether the ~~client~~ person should be admitted as an inpatient. Inpatient hospital admissions are subject to retrospective review by the department or the department's designated review organization to determine whether the inpatient admission was medically necessary for Medicaid payment purposes.

(27) "Inpatient hospital services" means services that are ordinarily furnished in an acute care hospital for the care and treatment of an inpatient under the direction of a physician, dentist, or other practitioner as permitted by federal law, and that are furnished in an institution that:

(a) is licensed or formally approved as an acute care hospital by the officially designated authority in the state where the institution is located;

(b) except as otherwise permitted by federal law, meets the requirements for participation in Medicare as a hospital and has in effect a utilization review plan that meets the requirements of 42 C.F.R. § 482.30; or

(c) provides acute care psychiatric hospital services as defined in this rule for individuals under age 21.

(28) "Inpatient hospital utilization fee" means the utilization fee collected by the Department of Revenue as provided in 15-66-102, MCA.

(29) "Inpatient rehabilitation facility (IRF)" means a free standing rehabilitation hospital or rehabilitation unit located in a hospital.

~~(29)~~(30) "Interim claim" in a prospective payment system (PPS) hospital means a claim being billed for an inpatient hospital stay equal to or exceeding 30 days at the same facility as referenced in ARM 37.86.2905.

~~(30)~~(31) "Long-acting reversible contraceptives (LARCs)" means intrauterine devices and contraceptive implants that provide long-acting reversible contraception.

~~(31)~~(32) "Long term acute care hospital (~~LTCH~~ LTAC)" means an acute care hospital as defined in 42 C.F.R. § 412.23.

~~(32)~~(33) "Low income utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2935.

~~(33)~~(34) "Medicaid inpatient utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2932.

~~(34)~~(35) "Out-of-state hospital" means a hospital located more than 100 miles beyond the Montana state border.

~~(35)~~(36) "Partial eligibility" means a client that is only eligible for Medicaid benefits during a portion of the inpatient hospital stay as specified in ARM 37.86.2918.

~~(36)~~(37) "Present on ~~A~~admission (POA)" means conditions that are present at the time a medical order for an inpatient admission occurs.

~~(37)~~(38) "Prior authorization (PA)" means the approval process required before certain services are paid by Medicaid. Prior authorization must be obtained before providing the service.

~~(38)~~(39) "Prospective payment system (PPS) hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by ~~the Centers for Medicare and Medicaid Services (~~CMS~~)~~ in accordance with 42 C.F.R. ~~part~~ § 412.

~~(39)~~(40) "Relative weight" means a weight assigned from a national database from 3M that reflects the typical resources consumed per APR-DRG.

~~(40)~~(41) "Routine disproportionate share hospital" means a hospital in Montana which meets the criteria of ARM 37.86.2931.

~~(41)~~(42) "Rural hospital" means for purposes of determining disproportionate share hospital payments, an acute care hospital that is located within a "rural area" as defined in 42 C.F.R. § 412.62~~(f)(iii)~~.

~~(42)~~(43) "Sole community hospital" means a DRG reimbursed hospital classified as such by ~~the Centers for Medicare and Medicaid Services (~~CMS~~)~~ in accordance with 42 C.F.R. § 412.92~~(a) through (d)~~.

~~(43)~~(44) "Third party liability (TPL)" means any entity that is, or may be, liable to pay all or part of the medical cost of care for a Medicaid eligible client.

~~(44)~~(45) "Transferring hospital" means a hospital that formally releases an inpatient client to another inpatient hospital or inpatient unit of a hospital.

~~(45)~~(46) "Transplant" means to transfer either tissue or an organ from one body or body part to another as referenced in ARM 37.86.4701. A transplant may be either:

(a) "organ transplantation," ~~,~~ the implantation of a living, viable, and functioning human organ for the purpose of maintaining all or a major part of that organ function in the client; or

(b) "tissue transplantation," ~~,~~ the implantation of living, human tissue.

~~(46)~~(47) "Uncompensated care" means hospital services provided in which no payment is received from the client or from a third party payor. Uncompensated care includes charity care and bad debts.

~~(47)~~(48) "Upper payment limit" means a federal limit placed on fee-for-service reimbursement of Medicaid providers.

~~(48)~~(49) "Urban hospital" means an acute care hospital that is located within a metropolitan statistical area, as defined in 42 C.F.R. § 412.62~~(f)(2)~~.

Authorizing statute(s): 53-2-201, 53-6-113, MCA

Implementing statute(s): 53-2-201, 53-6-101, 53-6-111, 53-6-113, ~~53-6-141~~, 53-6-149, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION

(1) The department's all patient refined diagnosis related groups (APR-DRG) prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, ~~is~~ are stated in the department's APR-DRG fee schedule adopted and effective at ARM 37.85.105. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) The department will assign an APR-DRG to each Medicaid client discharge in accordance with the current APR-grouper program version, as developed by 3M Health Information Systems. The assignment and reimbursement of each APR-DRG is based on:

(i) ~~the ICD-9-CM principal diagnoses for dates of discharge prior to and including September 30, 2015, and~~ the ICD-10-CM principal diagnoses ~~for dates of discharge October 1, 2015 and thereafter~~;

(ii) ~~all ICD-9-CM secondary diagnoses for dates of discharge prior to and including September 30, 2015, and~~ the ICD-10-CM secondary diagnoses ~~for dates of discharge October 1, 2015 and thereafter~~;

(iii) all ~~ICD-9-CM medical procedures performed during the client's hospital stay for dates of discharge prior to and including September 30, 2015, and the~~ ICD-10-PCS medical procedures performed during the client's hospital stay ~~for dates of discharge October 1, 2015 and thereafter~~;

(iv) the client's age;

(v) the client's gender;

(vi) the client's discharge status; and

(vii) diagnosis codes related to hospital-acquired conditions that are not present or undetermined to be present on admission.

(b) For each APR-DRG, the department determines a relative weight using a national database from 3M that reflects the cost of hospital resources used to

treat cases. The relative weights have been re-centered so that the average Montana Medicaid stay has a base weight of 1.00. Adjustments are applied to specific APR-DRG weights to reflect department policy. The relative weight for each APR-DRG is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

(d) The department computes a base price for long term acute care (LTAC) hospitals. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

(e) The department computes a base price for inpatient rehabilitation facilities (IRFs). The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

~~(e)~~(f) The department computes a base price for Center of Excellence hospitals. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

~~(f)~~(g) The relative weight for the assigned APR-DRG is multiplied by the average base price per case to compute the APR-DRG prospective payment rate for that Medicaid client discharge.

~~(g)~~(h) For claims with dates of payment on or after August 1, 2011, when a hospital-acquired condition (HAC) occurs during hospitalization and the condition was not present or undetermined to be present on admission, claims will be paid as though the diagnosis is not present or undetermined to be present. ~~Hospital-acquired conditions refers to the Centers for Medicare and Medicaid Services (CMS) definition as provided in Section 1886(d)(4) of the Social Security Act.~~

~~(h)~~(i) Inpatient reimbursement will be calculated at the lesser of the assigned APR-DRG rate or the claim billed charges.

(2) The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds adopted and effective at ARM 37.85.105. The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR-DRG grouper are contained in the APR-DRG Fee

Schedule which is adopted and effective as provided at ARM 37.85.105 and published by the department. Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

Authorizing statute(s): 2-4-201, 53-2-201, 53-6-113, MCA

Implementing statute(s): 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

Reasonable Necessity Statement

The Department of Public Health and Human Services is proposing to amend ARM 37.86.2901 and 37.86.2907.

Inpatient rehabilitation facilities (IRFs) are free standing rehabilitation hospitals or rehabilitation units located in a hospital. IRF patients must be able to do intense rehabilitation, which requires three hours of rehabilitation per day at a minimum of five days per week. IRF patient rehabilitation schedules result in shorter patient stays. The first IRF opened in Montana in 2019, but no rules currently exist to define IRFs or to establish a base rate for this type of hospital. IRF patients are generally more complex than general hospital patients but not as complex as long term acute care hospital (LTAC) patients. It is necessary to establish an appropriate base rate for IRFs because they are a distinct type of hospital that needs a base rate allowing IRFs to better cover their complex patient costs. The Health Resources Division recommends setting the IRF base rate at $6,790.

37.86.2901

The department proposes adding language to the rule to define "inpatient rehabilitation facility (IRF)." CMS distinguishes IRFs from other types of hospitals for certification, compliance, and reimbursement purposes. This rule complies with the department's obligation to implement CMS definitions. The department also proposes revisions to certain definitions to correct references and/or to clarify the definition of the terms.

37.86.2907

The department proposes to delete out-of-date references to ICD-9-CM in ARM 37.86.2907(1)(a). The department also proposes to insert a new (1)(e) (and renumber the subsequent provisions accordingly) to indicate that it will compute IRF base rates similar to the manner in which it computes base rates for LTAC hospitals and Center of Excellence hospitals. The department also proposes to delete reference to the CMS definition of "hospital-acquired conditions" in newly renumbered (1)(h).

Fiscal Impact

Category	FFY2024	Federal	State	FFY2025	Federal	State
Medicaid	$24,540.51	$15,775.87	$8,764.64	$25,952.99	$16,641.05	$9,311.93
Expansion	$24,958.91	$22,463.02	$2,495.89	$25,269.20	$22,742.28	$2,526.92
Total	$49,499.42	$38,238.89	$11,260.53	$51,222.19	$39,383.33	$11,838.85
Category	SFY2024	Federal	State	SFY2025	Federal	State
Medicaid	$18,405.38	$11,854.91	$6,550.48	$25,522.13	$16,364.79	$9,157.34
Expansion	$18,719.18	$16,847.26	$1,871.92	$25,957.26	$23,361.54	$2,595.73
Total	$37,124.57	$28,702.17	$8,422.39	$51,479.40	$39,726.33	$11,753.07
*** SFY2024 is only 9 months due to the 10/1/2023 start date						

Effective Date

The department intends for these rule amendments to be effective retroactive to October 1, 2023.

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.

Bill Sponsor Notification

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

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 in this notice.

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

Bree Gee

Approval

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