



MONTANA  
ADMINISTRATIVE  
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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**NOTICE OF ADOPTION**

**MAR NOTICE NO. 2025-98.2**

**Summary**

Amendment of ARM 37.86.2901 and 37.86.2907 pertaining to inpatient rehabilitation facilities

**Previous Notice(s) and Hearing Information**

On April 25, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-98.1 pertaining to the public hearing on the proposed amendment of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 8.

A hearing was held on May 15, 2025.

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**Final Rulemaking Action – The department intends to apply these rule amendments retroactively to October 1, 2023.**

**AMEND AS PROPOSED**

The agency has amended the following rule as proposed:

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

**AMEND WITH CHANGES**

The agency has amended the following rule with the following changes from the original proposal, 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. Charity care eligibility is determined pursuant to a hospital's policies. 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 & Medicaid Services (CMS), the Department of Defense (DOD), or the Department of Veterans Affairs (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 that requires the skills and expertise of a 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 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. § 412.27.
- (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 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 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 person will remain in the hospital for more than 24 hours. The physician or other practitioner is responsible for deciding whether the 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 Mont. Code Ann. § 15-66-102.
- (29) "Inpatient Rehabilitation Facility's (IRF's)" means free standing Rehabilitation Hospitals or Rehabilitation Units located in a hospital that meets the requirements in 42 CFR 412.29.
- (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.
- (31) "Long-acting reversible contraceptives (LARCs)" means intrauterine devices and contraceptive implants that provide long-acting reversible contraception.

- (32) "Long term acute care hospital (LTAC)" means an acute care hospital as defined in 42 C.F.R. § 412.23.
- (33) "Low income utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2935.
- (34) "Medicaid inpatient utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2932.
- (35) "Out-of-state hospital" means a hospital located more than 100 miles beyond the Montana state border.
- (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.
- (37) "Present on admission (POA)" means conditions that are present at the time a medical order for an inpatient admission occurs.
- (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.
- (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 CMS in accordance with 42 C.F.R. § 412.
- (40) "Relative weight" means a weight assigned from a national database from 3M that reflects the typical resources consumed per APR-DRG.
- (41) "Routine disproportionate share hospital" means a hospital in Montana which meets the criteria of ARM 37.86.2931.
- (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.
- (43) "Sole community hospital" means a DRG reimbursed hospital classified as such by CMS in accordance with 42 C.F.R. § 412.92.
- (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.
- (45) "Transferring hospital" means a hospital that formally releases an inpatient client to another inpatient hospital or inpatient unit of a hospital.
- (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.
- (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.
- (48) "Upper payment limit" means a federal limit placed on fee-for-service reimbursement of Medicaid providers.
- (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.

**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, 53-6-149, MCA

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### **Statement of Reasons**

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

COMMENT #1: One commenter stated that the department should reference a formal classification, such as 42 CFR 412.29, in its definition of "inpatient rehabilitation facility (IRF)" to distinguish IRFs from other facilities because Montana does not separately license IRFs.

RESPONSE #1: The department agrees with the comment. The amended ARM 37.86.2901 has been revised to reference 42 CFR 412.29 in the definition of "inpatient rehabilitation facility (IRF)."

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### **Contact**

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**Rule Reviewer**

Chanan Brown

**Approval**

Charles T. Brereton, Director

Department of Public Health and Human Services