

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.104 and 37.85.105)
pertaining to updating Medicaid and)
non-Medicaid provider rates, fee)
schedules, and effective dates)

TO: All Concerned Persons

1. On August 5, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1012 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1615 of the 2022 Montana Administrative Register, Issue Number 15.

2. The department has amended the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter asked why the rates had decreased for crisis stabilization.

RESPONSE #1: The rates have not decreased for crisis stabilization. The department is aligning non-Medicaid state-funded crisis services with Medicaid-funded crisis services. To align such crisis stabilization services with Medicaid-funded crisis stabilization services, the department has proposed a per diem rate for non-Medicaid crisis stabilization services of \$367.54, which is consistent with the rate for Medicaid-funded crisis stabilization services. This is not a rate reduction as this rate averages out, over a three-day period, to be higher than the average reimbursement for a three-day stay under the current 72-hour program and also allows for additional days if the individual requires a longer stay.

COMMENT #2: A few commenters stated that the proposed hourly rate of \$21.16 for non-Medicaid crisis receiving is not sufficient for financial stability of the program and provides the wrong incentive for providers to keep individuals for as long as possible to receive a higher reimbursement, compounding the individual's trauma. In addition, one of the commenters proposed a couple of alternative rate structures for the department to consider. One proposed method would be to front-load the reimbursement to reflect the acuity of an individual's first hours of stay, the other is to establish a daily rate of \$390.00 per day regardless of the number of hours an individual is in a crisis receiving center. One of the commenters also stated that the department proposed substantive changes to the crisis reimbursement rates for non-Medicaid populations, but the fee schedules are not in alignment.

RESPONSE #2: The department agrees with the commenter that non-Medicaid and Medicaid crisis stabilization services fee schedules need to be aligned, and will adjust the fee schedules accordingly. The department also agrees with the commenter that there is potential for providers to keep individuals longer than necessary in order to maximize reimbursement. To address this potential issue, the department will set the daily rate for both of the non-Medicaid and Medicaid crisis receiving services consistent with the rate that is established for Medicaid funded crisis receiving and stabilization, which is \$367.54, regardless of how long the individual is in crisis receiving, up to 23 hours and 59 minutes. This addresses both commenters' concerns about the sustainability of the program and the consistency of rates. The department is working with a contractor to review provider reimbursement rates across the department's programs and services. As a result, and consistent with current appropriations, the department cannot consider an increase to \$390.00 per day at this time.

COMMENT #3: One commenter stated that, because the department did not align crisis service rates with those proposed by the rate study, it ensures that no providers can establish or maintain crisis services.

RESPONSE #3: The department acknowledges that the rates were not adjusted to the rates identified by the provider rate review. The department continues to work with the contractor completing the provider rate review with respect to all the proposed rates and is aware that there are discrepancies. The provider rate review has resulted in a report to be utilized by the legislature in the upcoming legislative session. However, at this time, the department does not have the appropriations to increase the crisis service rates consistent with the rates identified by the contractor in the provider rate review

COMMENT #4: Several commenters recommended the department remove mental health as a required component in the substance use disorder (SUD) proposed bundled rates. The commenters noted that not all members need to receive mental health services and allowing mental health to be billed outside the bundled rate allows for more individualized care.

RESPONSE #4: The department agrees with commenters and will amend the SUD bundled rates on the fee schedules to reflect the removal of mental health service from the bundle of services. The amended rates will be provided by the contractor that performed the provider rate review for the department. This will allow providers to bill mental health outside the bundled rate on a fee-for-service basis.

COMMENT #5: A few commenters stated that moving from the tiered reimbursement rates to a weekly bundled rate for ASAM 2.1 will be detrimental to the delivery of this service and providers will lose revenue.

RESPONSE #5: The department acknowledges that a weekly bundled rate is different from how providers currently bill for ASAM 2.1 services. Currently,

providers are allowed to bill for services for a given day in a week as high tier (six hours per week for adults; four hours per week for adolescents) or low tier (4-5 hours per week for adults). The department's goal is to align reimbursement with the ASAM Criteria. ASAM 2.1 programs provide a minimum of nine hours of skilled treatment services per week for adults and six hours of skilled treatment services per week for adolescents. The weekly rate for such bundled services will be billable provided that the client receives the applicable minimum number of hours of treatment services. This approach allows the department's rates to be aligned with the ASAM Criteria. The proposed rate was developed by the contractor that performed the provider rate review for the department.

COMMENT #6: A few commenters expressed concerns about discontinuing room and board reimbursement for ASAM 3.1 in lieu of bundled rates for ASAM 3.1 facilities. Providers have been allowed to bill room and board as a non-Medicaid service concurrently with Medicaid-covered treatment services. One commenter suggested that funds be made available to help fund room and board in addition to the proposed bundled rate.

RESPONSE #6: Medicaid does not pay for room and board. Accordingly, because the department is adding ASAM 3.1 to the Medicaid state plan and aligns non-Medicaid state-funded SUD services with Medicaid-funded SUD services, the department will no longer be providing non-Medicaid reimbursement for room and board. However, other program costs were included in the methodology used to develop the rates. The proposed bundled rates for substance use disorder levels of care were developed by the contractor that performed the provider rate review for the department. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, clinical supervision, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #7: One commenter recommended the department consider unbundling rates for substance use disorder services. The proposed changes ignore ASAM guidance of an unbundled service delivery model. The commenter states that unbundling would allow for a flexible continuum of care. The commenter suggests that several services should be billable concurrently pursuant to a "fee for service" model. They list mental health therapy, targeted case management (TCM), community based psychiatric rehabilitative support services (CBPRS), and illness management and recovery (IMR).

RESPONSE #7: The proposed bundled rates for substance use disorder levels of care were developed by the contractor that performed the provider rate review for the department. Implementing these bundled rates will ensure a consistent rate methodology for all levels of care. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, clinical supervision, productivity adjustment, administrative costs, program support costs,

and staff benefits/compensation. Additionally, the department has agreed to remove mental health services from the bundle of substance use disorder treatment services and to permit it to be billed outside the bundled rates. Bundling services commonly provided as part of a course of treatment for payment purposes is an efficient mechanism for billing (and payment) of such services. The department is required to prevent duplicate billing and Medicaid does not allow concurrent reimbursement of services that share any service components. Consequently, the commenter's suggestion would require the department to develop several different bundled payment rates for substance use disorder care (to reflect which services are not included in the bundle and which would be billed separately). Such an approach would create an unacceptable level of complexity and confusion and increase the potential for improper claims.

COMMENT #8: A few commenters expressed concerns regarding the proposed bundled rates stating that those rates will not cover the additional staffing requirements for the particular level of care.

RESPONSE #8: The bundled rates are designed to ensure a consistent rate methodology for all levels of care. The proposed bundled rates for substance use disorder levels of care were developed by the contractor that performed the provider rate review for the department; its methodology for development of the rates was designed to capture the components of care that contribute to the costs of providing such care. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, clinical supervision, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #9: One commenter recommended the department increase the proposed bundled rate for ASAM 3.1 parent/child facilities from the proposed rate of \$210.13 to \$330 per day. The commenter states that the increased rate would be needed to account for all costs of the service.

RESPONSE #9: The proposed bundled rates for ASAM 3.1 were developed by the contractor that performed the provider rate review for the department. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages, administrative costs, and program support costs gathered through provider surveys; staff time needed to deliver the service, clinical supervision, productivity adjustment, and staff benefits/compensation. The methodology for development of the rates was designed to capture the components of care that contribute to the costs of providing this level of care.

COMMENT #10: One commenter asked that the department work with the provider to determine which services being provided to children of clients being treated in those ASAM 3.1 facilities can be billed through procedure codes outside the bundled rate.

RESPONSE #10: The bundled rate for ASAM 3.1 is based on provision of services to the client admitted to that level of care, which would be the parent. Medically necessary services provided to the children in accordance with the child's individualized treatment plan would not be included in the bundled rate.

COMMENT #11: One commenter indicated that the proposed reimbursement rate for ASAM 3.1 is not sufficient to cover room and board for that service. They stated that a couple of options have been discussed internally, such as charging rent to ASAM 3.1 clients and the use of TANF funds, but they do not want to require either from clients receiving treatment in the facility. The commenter suggested the department re-implement the Second Chance Home TANF set aside to help cover room and board costs.

RESPONSE #11: The department acknowledges the comment. However, TANF and Second Chance Homes are outside the scope of this rulemaking.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State September 13, 2022.