

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 37.85.104 and 37.85.105 ) PROPOSED AMENDMENT  
pertaining to updating Medicaid and )  
non-Medicaid provider rates, fee )  
schedules, and effective dates )

TO: All Concerned Persons

1. On December 8, 2022, at 9:00 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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/87560537857?pwd=OFBwc0dOc2Rxc25kN3NYOWx3VXQ3dz09>, meeting ID: 875 6053 7857, and password: 759449; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 875 6053 7857, and password: 759449. Find your local number: <https://mt-gov.zoom.us/u/kdxPzDPJOC>.

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 November 23, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) remains the same.

(a) Mental health crisis services, as provided in ARM 37.88.101, is effective ~~October 1, 2022~~ January 1, 2023.

(b) and (c) remain the same.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~October 1, 2022~~ January 1, 2023.

(2) remains the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES

(1) The Montana Medicaid Program establishes provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds. Provider reimbursement rates are stated in fee schedules for covered services applicable to the identified Medicaid program. New rates are established by revising the identified program's fee schedule and adopting the new fees as of the stated effective date of the schedule. 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, Health Resources Division, 1401 East Lockety, P.O. Box 202951, Helena, MT 59620-2951. A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service are published in the chapter or subchapter of this title regarding that service. The department will make periodic updates, as necessary, to the fee schedules noted in this rule to include new procedure codes and applicable rates and ~~to removal of remove~~ terminated procedure codes.

(2) remains the same.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare & Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 86 Federal Register Volume 86, Issue 221, page 64996 (November Nov. 19, 2021) effective January 1, 2022, which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2022~~ January 1, 2023, will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2022~~ January 1, 2023. The conversion factor for physician services is \$42.29. The conversion factor for allied services is \$25.34. The conversion factor for mental health services is \$21.69. The conversion factor for anesthesia services is \$30.57.

(c) through (i) remain the same.

(j) Reimbursement for physician-administered drugs described in ARM 37.86.105 is determined ~~pursuant to in 42 CFR 414.904 (2016) 42 U.S.C. 1395w-3a. The department adopts 106% of the Average Sale Price (ASP), effective July 1, 2019.~~

(k) through (3)(b) remain the same.

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the CMS in 86 Federal Register Volume 86, Issue 218, page 63458 (November Nov. 16, 2021), effective January 1, 2022, and reviewed annually by CMS, as required in 42 CFR 419.5 (2016) and as updated by the department;

(ii) through (iv) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2022~~ January 1, 2023.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2022 resulting in a dental conversion factor of \$35.48 and fee schedule is effective ~~July 1, 2022~~ January 1, 2023.

(e) through (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~July 1, 2022~~ January 1, 2023, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs), as provided in ARM 37.86.1802, effective ~~July 1, 2022~~ January 1, 2023. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2022~~ January 1, 2023.

(l) through (p) remain the same.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2022~~ January 1, 2023.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2022~~ January 1, 2023.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2022~~ January 1, 2023.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~July 1, 2022~~ January 1, 2023.

(u) remains the same.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~July 1, 2022~~ January 1, 2023.

(w) and (x) remain the same.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2022~~ January 1, 2023.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2022~~ January 1, 2023.

(aa) through (5) remain the same.

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2022~~ January 1, 2023.

(b) remains the same.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~October 1, 2022~~ January 1, 2023.

(6) For the Behavioral Health and Developmental Disabilities Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2022~~ January 1, 2023.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.104 and ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules.

The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low-income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The proposed rule amendments are necessary so that the Montana Medicaid Program can adopt updated Medicare procedure codes that the federal Centers for Medicare & Medicaid Services (CMS) will adopt in January 2023. Montana Medicaid uses Medicare procedure codes. To ensure providers can accurately and timely bill for services they provide to Medicaid members, the department must adopt CMS's updated Medicare rates. Final Medicaid fee schedules are posted after CMS publishes its final fee schedules. The updated codes include new code additions, code deletions, and changes to existing code descriptions and rates.

Additionally, the proposed amendments represent the state's commitment to further expand coverage and promote access to crisis services for eligible Montanans by adding mobile crisis services for both the Medicaid and non-Medicaid programs.

The proposed amendments are explained below, regarding the specific subsection of ARM 37.85.104.

(1)(a)(d) Mental health crisis services and substance use disorder services, fee schedules

As part of the department's Healing and Ending Addiction Through Recovery and Treatment (HEART) Initiative, the Behavioral Health and Developmental Disabilities Division (BHDD) proposes to update the mental health crisis services fee schedule and substance use disorder services fee schedule, effective January 1, 2023, to reflect the addition of procedure codes for mobile crisis team services. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans with mental health issues.

The proposed amendments are explained below, regarding the specific subsections of ARM 37.85.105.

(2)(a) and (b) Resource-Based Relative Value Scale (RBRVS)

The department proposes to reimburse procedure codes created on or after January 1, 2023, using the relative value units currently in place, and then revise the fee schedule effective date to January 1, 2023, which is being revised to reflect the updated Medicare procedure codes adopted by the federal Medicare program.

(2)(j)

The department proposes to revise the reimbursement language for ASP pricing. Effective October 1, 2022, the Inflation Reduction Act changed the ASP pricing for select biosimilars from 106% to 108%.

(3)(c), (g), (r), (s), (t), (v), (y), and (z) Fee Schedules

The department proposes to revise the effective date for the following fee schedules to January 1, 2023, to reflect the updated Medicare procedure codes adopted by CMS: hearing aid services, ambulance services, audiology, occupational therapists, physical therapists, and speech therapists, optometric services, lab and imaging services, and licensed direct-entry midwives fee schedules.

(3)(d) Dentist fee schedule

The department proposes to update the Dentist Fee schedule, effective January 1, 2023, to reflect changes to the Current Dental Terminology (CDT) 2023 by removing applicable deleted covered codes and including their updated replacements.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies

The department proposes to revise the effective date of the reference to the Region D Supplier Manual to January 1, 2023, and revise the effective date of local coverage determinations (LCDs) and national coverage determinations (NCDs), that are provided in ARM 37.86.1802, to January 1, 2023.

The department is also proposing to revise the effective dates for the durable medical equipment fee schedule to January 1, 2023, to reflect the Calendar Year 2023 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule

(5)(a)(c) Mental health center services for adults and substance use disorder services, fee schedules

As part of the department's HEART Initiative, BHDD proposes to update the mental health center services for adults with severe disabling mental illness fee schedule and the substance use disorder services fee schedule, effective January 1, 2023, to reflect the addition of procedure codes for mobile crisis team services. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans with mental health issues.

(6) Youth mental health services, fee schedule

As part of the department's HEART Initiative, BHDD proposes to update the youth mental health services fee schedule, effective January 1, 2023, to reflect the addition of procedure codes for mobile crisis team services. Mobile crisis services are intended for members of all ages experiencing a behavioral health crisis. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans with mental health issues.

Fiscal Impact

This proposed rule amendment to ARM 37.85.105 has estimate costs listed in the table below for the changes related to mobile crisis services.

<u>SFY2023</u>	
State Share	\$637,576
<u>Federal Share</u>	<u>\$2,196,094</u>
Total	\$2,833,670

This proposed rule amendment to ARM 37.85.105 has estimate costs listed in the table below for the changes related to ASP pricing.

<u>SFY2023</u>	
State Share	\$5,118
<u>Federal Share</u>	<u>\$29,393</u>
Total	\$34,511

These proposed rule amendments are expected to be budget neutral for all other services.

5. The department intends to apply these proposed rule amendments retroactively to January 1, 2023. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. 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: Kassie Thompson, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., December 16, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. 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 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

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

Certified to the Secretary of State November 9, 2022.