

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 37.40.307, 37.40.315, )  
37.85.104, 37.85.105, 37.85.106, )  
37.85.212, 37.86.1006, 37.86.2002, )  
37.86.2102, 37.86.2105, and )  
37.86.3607 pertaining to updating )  
Medicaid and non-Medicaid provider )  
rates, fee schedules, and effective )  
dates )

TO: All Concerned Persons

1. On May 24, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1067 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1132 of the 2024 Montana Administrative Register, Issue Number 10. In addition, on June 21, 2024, the department published an amended notice pertaining to the proposed amendment of the above-stated rules at page 1442 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the following rules as proposed: ARM 37.40.307, 37.40.315, 37.85.104, 37.85.105, 37.85.106, 37.85.212, 37.86.1006, 37.86.2002, 37.86.2102, 37.86.2105, and 37.86.3607.

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: The department received a comment stating the department failed to comply with the legislative appropriations and applicable law. They cited a statute in Title 37, MCA, and assert optometrists should be reimbursed equal to the amount paid to medical doctors and doctors of osteopathy, whose reimbursement the Montana legislature has directed to be paid pursuant to 53-6-125, MCA.

RESPONSE #1: As the commenters are aware, this assertion is the subject of a lawsuit filed in state district court and will be resolved through that process.

COMMENT #2: The department received a comment in support of the removal of limitation on crowns under ARM 37.86.1006(5)(e) and with adding D4346 as a covered service.

RESPONSE #2: The department appreciates the comments and support.

COMMENT #3: The department received a comment regarding the proposed Dental and Denturist Program Manual. The commenter noted that a section of the manual regarding crowns does not align with the intent to ensuring adult members have access to porcelain/ceramic crowns. The commenter recommended removing from the manual this sentence: "Generally, crowns on posterior teeth are limited to pre-fabricated resin and/or pre-fabricated stainless steel, except when necessary for partial denture abutments. Indicate in the Remarks section of the claim form which teeth are abutment teeth."

RESPONSE #3: The department agrees with the commenter, and the sentence will be removed from the Dental and Denturist Program Manual.

COMMENT #4: A commenter opposes the proposed changes related to reimbursement rates for physicians and anesthesia services. The commenter noted that a specific statute pertains to physician services reimbursement and cited "53-6-155." The commenter stated the department proposal does not provide for an increase and instead proposes a reimbursement rate change based on a percentage decrease. The commenter said the department should not be using a negative percentage as a factor to determine the physician conversion factor. The commenter said if the methodology produces a negative percentage, there should be no rate adjustment.

RESPONSE #4: The commenter referred to 53-6-155, MCA; however, 53-6-125, MCA, is the statute that provides guidance on the physician conversion factor. For the year ending 6/30/2023, the consumer price index for medical care was negative 0.8 percent. The statute is silent with respect to how a negative consumer price index for medical care should be addressed. In the absence of such direction, the department will follow its consistent methodology for calculating the physician conversion factor. The department has consistently followed the statute by multiplying the existing physician conversion factor by the consumer price index for medical care from the previous year, and will do so for the fiscal year beginning July 1, 2024.

COMMENT #5: A commenter asked the department to clarify how the department reached the number for the consumer price index for medical services. The commenter cited a publication of the U.S. Department of Labor and asserted that the unadjusted 12-month rate for medical care ending in May 2024 shows an increase of 3.1 percent. The commenter asked the department to increase reimbursement rates by a minimum amount of 0.5 percent based on the medical care CPI increase in 2023.

RESPONSE #5: The department utilized the following publication for the conversion factor calculation for the consumer price index for medical care services: [https://www.bls.gov/news.release/archives/cpi\\_07122023.htm](https://www.bls.gov/news.release/archives/cpi_07122023.htm). On this page, Table A's last column (labeled "Unadjusted 12 mos. ended June 2023") shows the consumer price index for medical care services as: negative 0.8 percent.

4. These rule amendments are retroactively effective to July 1, 2023, January 1, 2024, May 1, 2024, or July 1, 2024, as indicated in the original proposal notice for Notice No. 37-1067, published on May 24 in Issue 10 of the Montana Administrative Register.

/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 10, 2024