

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 37.40.830 pertaining to hospice) PROPOSED AMENDMENT
fee schedule)

TO: All Concerned Persons

1. On May 20, 2021, at 10:00 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 rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85645942171>; meeting ID: 856 4594 2171; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 856 4594 2171. Find your local number: <https://mt-gov.zoom.us/u/kuBgZP4e2>.

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 May 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 dphhslegal@mt.gov.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) through (11) remain the same. (12) The hospice fee schedules are effective ~~October 1, 2019~~ October 1, 2020. 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 Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule referenced in (12), effective October 1, 2020. This new fee schedule is being proposed in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare and Medicaid Services (CMS) under the final Medicare hospice rule published on August 4, 2020 (CMS-1733-F).

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 2.4%, as computed and published by CMS, which will apply to providers in all 56 counties. Montana hospice rates are affected by a wage index applied geographically by county. The 2021 wage index has increased for Carbon and Yellowstone Counties by approximately 0.68%. Effective October 1, 2020, Golden Valley County is now calculated using a rural index of 0.8569% which is a decrease from the Fiscal Year 2020 urban index rate of 0.9224%. The wage index for Cascade County has decreased by 1.56%. The wage index for Missoula County has increased by approximately 0.45%. The remainder of the Montana counties are subject to the rural index rate, which decreased by approximately 1.41%. Additionally, one hospice provider will see a hospice reimbursement rate decrease of 2% for failure to comply with the federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at <https://medicaidprovider.mt.gov/proposedfs>.

The proposed rule amendment is necessary to pay Medicaid providers according to the current Medicare fee schedule effective October 1, 2020. Failure to amend the rule will result in a deficient state hospice reimbursement rate from the current federal rate, which would result in underpayment to hospice providers, and introduce an inability for the state to comply with federal requirements pertaining to hospice providers.

Fiscal Impact

The proposed amendment to ARM 37.40.830 will have a fiscal impact on the hospice program. Funds impacted will be from the federal Medicaid fund source (03583) and general fund source (01100). In Fiscal Year (FY) 2020, approximately 436 Medicaid recipients received the hospice benefit. A majority of the Medicaid hospice program's approximately \$4.1 million budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice. The proposed rate increase of 2.4% is estimated to have a fiscal impact of \$114,705 in combined state and federal funds as compared to FY 2020.

The department intends for the increase in hospice rates to be retroactive to October 1, 2020. Any decreases in hospice rates will not be applied retroactively and would be effective upon adoption of the proposed rule amendment.

5. 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: Heidi Clark, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2021.

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

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

10. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State April 20, 2021.