

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 AND
ARM 37.85.104, 37.85.105, and) EXTENSION OF COMMENT
37.85.106 pertaining to updating) PERIOD ON PROPOSED
Medicaid and non-Medicaid provider) AMENDMENT
rates, fee schedules, and effective)
dates)

TO: All Concerned Persons

1. On June 11, 2021, the Department of Public Health and Human Services (department) published MAR Notice No. 37-944 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 687 of the 2021 Montana Administrative Register, Issue Number 11. The department held a public hearing on July 1, 2021, and the initial comment period was scheduled to end on July 9, 2021.

2. On July 15, 2021, at 9:00 a.m., the Department of Public Health and Human Services will hold a second public hearing via remote conferencing to consider the revised proposed amendment of ARM 37.85.105. This second hearing will supplement the hearing held July 1, 2021. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84665865189>; meeting ID: 846 6586 5189; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 846 6586 5189. Find your local number: <https://mt-gov.zoom.us/j/84665865189>.

3. The department 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 no later than 5:00 p.m. on July 13, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

4. The department has supplemented the proposal notice to ensure that the proposed rule changes comply with 53-6-127, MCA, which provides that a policy adjuster may not be less than 1 (or 100%). Thus, the proposed policy adjuster for evaluation and management must be removed from the notice. Additionally, because the evaluation and management policy adjuster is removed, the department must decrease the proposed provider rate of reimbursement for optometrists from the proposed 115.69% to 114.79% to ensure the optical service provider rate increase meets the provider rate increase approved by the Montana Legislature.

5. ARM 37.85.105 as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(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 and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~84 Federal Register 221, page 62568 (November 12, 2019) effective January 1, 2020~~ 85 Federal Register 248, page 84472 (December 28, 2020) effective January 1, 2021, which is adopted and incorporated by reference. Procedure codes created after January 1, 2021 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 ~~January 1, 2021~~ July 1, 2021. The conversion factor for physician services is ~~\$39.54~~ \$41.88. The conversion factor for allied services is ~~\$24.66~~ \$24.75. The conversion factor for mental health services is ~~\$23.40~~ \$21.44. The conversion factor for anesthesia services is \$30.57.

(c) Policy adjusters are effective ~~July 1, 2016~~ July 1, 2021. The maternity policy adjuster is ~~112%~~ 100%. The family planning policy adjuster is 105%. The psychological testing for youth policy adjuster is 145%. The psychological testing policy adjuster applies only to psychologists.

(d) The BCBA/BCBA-D services policy adjuster is ~~105%~~ 115.8% effective ~~July 1, 2020~~ July 1, 2021.

(e) The payment-to-charge ratio is effective ~~July 1, 2020~~ July 1, 2021 and is ~~45.2%~~ 44.4% of the provider's usual and customary charges.

(f) through (h) remain the same.

(i) Optometric services receive a ~~117.50%~~ 114.79% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective July 1, 2021.

(j) and (k) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) remains the same.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in ~~Federal Register Volume 84, Issue 218, page 61142 (November 12, 2019)~~ Federal Register Volume 85, Issue 249, page 85866 (December 29, 2020), effective ~~January 1, 2020~~ January 1, 2021, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

(ii) remains the same.

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is 48% 41.06%; and

(iv) the bundled composite rate of ~~\$255.47~~ \$258.02 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2020~~ July 1, 2021.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2021~~ July 1, 2021.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2020~~ 2021 resulting in a dental conversion factor of ~~\$34.71~~ \$35.06 and fee schedule is effective ~~January 1, 2021~~ July 1, 2021.

(e) remains the same.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~July 1, 2020~~ July 1, 2021:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$15.42~~ \$15.57;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$13.36~~ \$13.49; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is ~~\$2.23~~ \$6.06 and the maximum is ~~\$11.30~~ \$11.41.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be \$21.32 for the first vaccine and ~~\$14.34~~ \$15.50 for each additional administered vaccine, effective ~~January 1, 2021~~ July 1, 2021.

(i) remains the same.

(j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2020~~ July 1, 2021.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~January 1, 2021~~ July 1, 2021, 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 ~~January 1, 2021~~ July 1, 2021. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2021~~ July 1, 2021.

(l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(m) remains the same.

(n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2020~~ July 1, 2021.

(p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2020~~ July 1, 2021.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2021~~ July 1, 2021.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2020~~ July 1, 2021.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~July 1, 2020~~ July 1, 2021.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2021~~ July 1, 2021.

(u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2020~~ July 1, 2021.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2021~~ July 1, 2021.

(w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2020~~ July 1, 2021.

(x) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2020~~ July 1, 2021.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2021~~ July 1, 2021.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2021~~ July 1, 2021.

(aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2020~~ July 1, 2021.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~October 1, 2020~~ July 1, 2021.

(b) The home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2020~~ July 1, 2021.

(c) The personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2020~~ July 1, 2021.

(d) The self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2020~~ July 1, 2021.

(e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2020~~ July 1, 2021.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2020~~ July 1, 2021.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2020~~ July 1, 2021.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~July 1, 2020~~ July 1, 2021.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~January 1, 2021~~ July 1, 2021.

AUTH: 53-2-201, 53-6-113, MCA, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

6. The department has amended the following paragraphs of the statement of reasonable necessity, but with the following changes from the original proposal, new matter underlined, deleted matter interlined. All other portions of the statement of reasonable necessity remain as proposed.

(2)(c) Policy Adjustors

Montana Medicaid utilizes payment policy adjustors to modify reimbursement. Effective July 1, 2021, Montana Medicaid is proposing to decrease the maternity policy adjustor to 1.0 and ~~is proposing a new policy adjustor of 0.8367 for Evaluation and Management codes (CPT 99202-99499).~~ These proposed changes are This proposed change is necessary to offset the Medicare increases in RVUs ~~and to maintain budget neutral expenditures for physicians. Physicians were excluded from the provider rate increase approved in HB2 by the Montana Legislature.~~

(2)(i) Optometric Services Provider Rate of Reimbursement

The optometric services provider rate of reimbursement changed from 117.50% to ~~115.69%~~ 114.79% due to changes in relative values and an increase in the allied health conversion factor. This will ensure the optical service provider rate increase meets the provider rate increase approved by the Montana Legislature.

7. The department has amended the following paragraphs of the fiscal impact, but with the following changes from the original, new matter underlined, deleted matter interlined. All other portions of the fiscal impact remain as proposed.

Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, effective dates, conversion factors, and rates for services for SFY 2022 based on the proposed amendments.

Provider Type	SFY 2022 Budget Impact (Federal Funds)	SFY 2022 Budget Impact (State Funds)	SFY 2022 Budget Impact (Total Funds)	Active Provider Count
Mid-Level Practitioner	\$0 <u>\$4,680,756</u>	\$0 <u>\$1,305,777</u>	\$0 <u>\$5,986,533</u>	5,547
Physician	\$0 <u>\$13,745,186</u>	\$0 <u>\$3,940,836</u>	\$0 <u>\$17,686,022</u>	13,068
Podiatrist	\$0 <u>\$236,476</u>	\$0 <u>\$61,122</u>	\$0 <u>\$297,598</u>	80

Psychiatrist	\$0 <u>\$499,654</u>	\$0 <u>\$162,694</u>	\$0 <u>\$662,348</u>	192
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The fiscal impact for optometrists and all other provider types remains as proposed.

The department intends for the proposed amendments to be effective retroactive to July 1, 2021.

8. 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., July 23, 2021.

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

/s/ Erica Johnston for Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 29, 2021.