

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 pertaining to nursing )  
facility reimbursement )

TO: All Concerned Persons

1. On June 11, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-948 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 711 of the 2021 Montana Administrative Register, Issue Number 11.

2. The statement of reasonable necessity for MAR Notice No. 37-948 contains a clerical error. The notice correctly sets forth the dollar amount of the proposed nursing facility reimbursement rate and the cost associated with the proposed increase. However, the notice incorrectly states the percentage rate of increase. Specifically, the third sentence of the fiscal impact statement indicates the provider rate increase for nursing facility reimbursement will include an increase of 0.03%. The provider rate of increase should have been stated as three tenths of one percent (0.3%). Pursuant to 2-4-305(8)(b), MCA, the department is using this adoption notice to correct the clerical error and to amend the third sentence of the fiscal impact statement in MAR Notice No. 37-948 to read: "Nursing facility reimbursement will include an increase of three tenths of one percent (0.3%) in provider rates."

3. The department has amended the above-stated rule as proposed.

4. 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: Comments were made that the 0.3% increase in rates is woefully inadequate and does not meet costs of operating nursing facilities or the increased costs due to COVID-19.

RESPONSE #1: As set forth in the statement of reasonable necessity, the rate increase reflects the availability of appropriated funds resulting from the Montana 67th Legislative Session.

The annual rate to cost analysis that is performed by the department for the rate setting process indicates for state fiscal year (SFY) 2019 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (IGT and direct care wages) was \$220.37 compared to the Medicaid inflated cost of \$244.93, or that on average Medicaid is covering approximately 93.66% of cost through the

various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities. For SFY 2020 (SFY ending June 30, 2020), the average total rate that includes all supplemental payments is \$238.34 compared to the Medicaid inflated cost of \$249.92, or that on average Medicaid is covering approximately 99.51% of cost through the various forms of reimbursement to nursing facility providers.

COMMENT #2: A comment was made in appreciation of the COVID-19 supplemental payments.

RESPONSE #2: The department thanks the commenter for support of the COVID-19 supplemental payments.

5. The department intends to apply these rule amendments retroactively to July 1, 2021. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State August 31, 2021.