

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 37.40.307 pertaining to nursing) PROPOSED AMENDMENT
facility reimbursement)

TO: All Concerned Persons

1. On July 1, 2021, at 11:00 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/84203399216>; meeting ID: 842 0339 9216; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 842 0339 9216. Find your local number: <https://mt-gov.zoom.us/u/kx4s5R9An>.

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 June 25, 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:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2020, and in subsequent rate years, the reimbursement rate for each nursing facility will be determined using the flat rate component specified in (2)(a) and the quality component specified in (2)(b).

(a) The flat rate component is the same per diem rate for each nursing facility and will be determined each year through a public process. Factors that could be considered in the establishment of this flat rate component include cost of providing nursing facility services and Medicaid recipient access to nursing facility services. The flat rate component for state fiscal year (SFY) ~~2021~~ 2022 is ~~\$208.06~~ \$208.71.

(b) remains the same.

(c) The total payment rate available for the period ~~July 1, 2020~~ July 1, 2021, through ~~June 30, 2021~~ June 30, 2022, will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361. Copies of the

department's current nursing facility Medicaid reimbursement rates per facility are posted at <https://medicaidprovider.mt.gov/26#1875810541-fee-schedules---nursing-facility-medicaid-rates> and may be obtained from the Department of Public Health and Human Services, Senior & Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the flat rate component as computed on ~~July 1, 2020~~ July 1, 2021. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.40.307 by revising nursing facility reimbursement rates for the upcoming State Fiscal Year (SFY) 2022.

The proposed amendments set the flat rate component for Medicaid nursing facility reimbursement at \$208.71 for SFY 2022. This rate equates to an increase of 0.03% from SFY 2021. The rate calculation includes House Bill (HB) 2 funding appropriated by the Montana Legislature during the 67th Legislative Session and annualized SFY 2021 Medicaid paid days to determine nursing facility providers' reimbursement according to the methodology outlined under subsection two of the rule. In balancing the factors that may be considered under section 53-6-113, MCA, and ARM 37.40.307(2) to establish the rate, the department's primary consideration was the availability of appropriated funds.

Copies of the department's proposed nursing facility Medicaid reimbursement rates per facility are posted at: <https://medicaidprovider.mt.gov/26#1875810541-fee-schedules---nursing-facility-medicaid-rates>.

The proposed amendments are necessary for the department to provide notice of the change to Medicaid nursing facility provider rates.

Fiscal Impact

The estimated total funding available for SFY 2022 for nursing facility reimbursement is approximately \$202,291,885 of combined state funds, federal funds, and patient contributions. These amounts do not include at risk provider funds or direct care wage funding. Nursing facility reimbursement will include an increase of 0.03% in provider rates. The estimated total cost of this rate increase is approximately \$414,206.

Anticipated days for SFY 2022 are 911,636, using estimates from SFY 2021 Medicaid paid days.

The SFY 2022 appropriated funding for lump-sum payments to providers for direct care and ancillary workers is \$6,970,153 for the nursing facility direct-care worker wage program and \$3,959,056 for certified nursing assistant only direct care worker wages program.

During SFY 2021, 68 nursing facility providers participated in the Medicaid nursing facility payment program and approximately 3,900 recipients received services in nursing facilities under Medicaid.

The department intends to apply the proposed amendments retroactively to July 1, 2021.

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., July 9, 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/ Erica Johnston for Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2021.