

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 37.85.105 pertaining to) PROPOSED AMENDMENT
optometric services rates)

TO: All Concerned Persons

1. On November 12, 2021, at 2:00 p.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. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at <https://mt-gov.zoom.us/j/88589976108>; meeting ID: 885 8997 6108; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 885 8997 6108. Find your local number: <https://mt-gov.zoom.us/j/88589976108>.

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 October 29, 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:

37.85.105 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) through (h) remain the same.

(i) Optometric services receive a ~~417.50%~~ 114.79% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2020~~ 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) through (s) remain the same.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2021~~ July 1, 2021. ~~The optometric services fee schedule does not incorporate the July 1, 2021 proposed amendments to (2)(a) through (i), (3)(k), and (3)(v), as proposed in MAR Notice No. 37-944.~~

(u) through (6) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105 as it pertains to optometric services.

The department is proposing an optometric provider rate of reimbursement (PRR), which is a pricing factor, of 114.79% with an effective date of July 1, 2021. When this pricing factor is applied against the utilization, relative value units (RVUs), and Allied Health Conversion Factor adopted in MAR Notice No. 37-944, optometrists and opticians will receive a weighted average provider rate increase of 1%. With this notice, the department is proposing to adopt a July 1, 2021, optometric services fee schedule that incorporates the RVUs, Allied Health conversion factor, laboratory rates, and durable medical equipment rates that were adopted in MAR Notice No. 37-944. The department will process mass adjustments of paid claims for optometrists and opticians with a date of service on or after July 1, 2021.

The following explains the reasonable necessity for this proposal and why the optometric service rates are being proposed separately from the rest of the provider rate changes, which were adopted in MAR Notice No. 37-944.

On June 11, 2021, MAR Notice No. 37-944 was published proposing implementation of the state fiscal year (SFY) 2022 provider rate increases provided for in House Bill (HB) 2. Utilizing the annual Resource-Based Relative Value Scale (RBRVS) modeling process, it was determined the optometric services PRR needed to be 115.69% to ensure optometrists and opticians received the appropriated 1% provider rate increase.

RBRVS rates for optometric services are calculated by multiplying code specific RVUs by the Allied Health Services Conversion Factor, applicable policy adjustors, and the optometric services PRR. During the RBRVS reimbursement methodology modeling process, the department considers all these factors in the aggregate using a weighted average based on utilization. At the time of this calculation, the department had proposed an Evaluation and Management Policy Adjustor. Optometrists can bill for evaluation and management codes; therefore, the proposed adjustor impacted the calculation of the optometric PRR, making this pricing factor 115.69%.

On July 9, 2021, the department published an amended notice for MAR Notice No. 37-944. This amended notice eliminated the proposed policy adjustor on evaluation and management codes. As with the proposed inclusion of the policy adjustor, the proposed elimination of the proposed Evaluation and Management Policy Adjustor impacted the overall provider rate increase on optometric services. To maintain the proposed 1% optometrist and optician provider rate increase, the optometric services PRR was amended to 114.79%. While it may appear that this amended value would decrease optometric service rates below the appropriated provider rate increase, it was needed to provide no more than the 1% rate increase authorized by the legislature.

Additionally, the Children, Families, Health, and Human Services Interim Committee lodged an objection to the portion of the rule notice pertaining to optometric services. The interim committee originally lodged a general objection to the rule notice on July 6, 2021, and renewed its objections in subsequent meetings, with the final objection relating to the portions of the rule pertaining to optometric services.

The department met with the Montana Optometric Association (MOA), as recommended by the interim committee, on September 29, 2021. The department provided a detailed walkthrough of the rate setting process, which the department uses to set all RBRVS rates including rates for optometric services. The department explained that based on the pricing factors proposed in the original and amended notices, each notice provided for an overall average optometric service increase of 1%, as appropriated by HB2. The detailed spreadsheet utilized during the meeting was provided to the MOA on September 29, 2021; the spreadsheet included the department's detailed calculations.

Because of the objection by the interim committee only to the portions of the rule pertaining to optometric services, the department adopted MAR Notice No. 37-944 without the optometric services rate increase. While the department would have preferred to finalize all provider rates at the same time, waiting to adopt the other provider rates would have resulted in a great burden to providers, the Medicaid claims processing system, and staff due to the volume of claims that would require adjustments when rate increases were finalized. After meeting with the MOA and providing explanation of the department's rate setting process for optometric services and how the payment rates proposed for optometric services provided a weighted average increase of 1%, the department now proposes to adopt the optometric services rates as proposed in MAR Notice No. 37-944's amended notice.

The proposed July 1, 2021 fee schedules can be found at <https://medicaidprovider.mt.gov/proposedfs>.

Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, optometric services provider rate of reimbursement, 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
Optician	\$911	\$288	\$1,199	29
Optometrist	\$49,869	\$15,849	\$65,718	237

The department proposes to apply these 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 dphslegal@mt.gov, and must be received no later than 5:00 p.m., November 19, 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, accordingly, 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/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State October 12, 2021.