



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-8.1

Summary

Amendment of ARM 37.40.802 and 37.40.830 pertaining to Hospice Reimbursement

Hearing Date and Time

Thursday, July 9, 2026, at 11:00 a.m.

Virtual Hearing Information

Join Zoom Meeting <https://mt-gov.zoom.us/j/83027564428?pwd=NFFOV7E6S2dbXJbyGJoMqATzoPbA8q.1&jst=1>

Meeting ID: 830 2756 4428 Password: 696749

Dial by Telephone +1 646 558 8656

Meeting ID: 830 2756 4428 Password: 696749

Find your local number: <https://mt-gov.zoom.us/u/kAvshhhQS>

Join by SIP - 83027564428@zoomcrc.com

Join by H.323 (Polycom) - 162.255.37.11##83027564428

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, July 17, 2026, at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by Thursday, June 25, 2026, at 5:00 p.m.

Contact

Kendra Fanning
(406) 444-1406
HHSAdminRules@mt.gov
Fax: (406) 444-9744

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

37.40.802 ADOPTION AND INCORPORATION BY REFERENCE

- (1) For purposes of this subchapter, the department adopts and incorporates by reference the following sections of the Code of Federal Regulations (CFR) that are in effect as of October 1, ~~2022~~ 2025:
 - (a) 42 CFR 418.3, which sets forth definitions of terms.
 - (b) 42 CFR 418.20 through 418.30, which set forth Medicare hospice care eligibility, election, and duration of benefits.
 - (c) 42 CFR 418.52 through 418.116, which set forth Medicare conditions of participation for hospice programs.
 - (d) 42 CFR 418.200 through 418.205, which set forth Medicare coverage of hospice services.
 - (e) 42 CFR 418.301 through 418.312, which set forth Medicare hospice care payment procedures.
- (2) Copies of these sections of the CFR may be obtained from the Department of Public Health and Human Services, Senior ~~& and~~ and Long-Term Care Division, ~~1100 N. Last~~

~~Chance Gulch~~, P.O. Box 4210, Helena, MT 59604-4210 or by visiting
<https://www.ecfr.gov/>.

Authorizing statute(s): 53-6-113, MCA

Implementing statute(s): 53-6-101, MCA

37.40.830 HOSPICE, REIMBURSEMENT

- (1) Medicaid payment for covered hospice care will be made in accordance with the specific categories of covered hospice care and the payment amounts and procedures established by Medicare under 42 CFR 418.301 through 418.312. The specific categories of covered hospice care include:
 - (a) routine home care day;
 - (b) continuous home care day;
 - (c) inpatient respite care day;
 - (d) general inpatient care day; and
 - (e) service intensity add-on.
- (2) Hospice Routine Home Care (RHC) level of care days will be paid at one of two RHC rates. RHC per-diem payment rates for the RHC level of care will be paid depending on the timing of the day within the patient's episode of care. Days 1 through 60 will be paid at the RHC "High" rate while all other days will be paid at the RHC "Low" rate.
- (3) The room and board rate to be paid a hospice for a Medicaid beneficiary who resides in a nursing facility will be the Medicaid rate established by the department in ARM 37.40.307 for the individual facility minus the amount the beneficiary pays toward their own cost of care. Payment for room and board will be made to the hospice and, in turn, the hospice will reimburse the nursing facility. General inpatient care or hospice respite care in a nursing facility will not be reimbursed directly by the Medicaid program when a Medicaid recipient elects the hospice benefit payment. Under such circumstances payment will be made to the hospice in accordance with this rule.
 - (a) In this context, the term "room and board" includes performance of personal care services, including assistance in the activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

- (4) The following services performed by hospice physicians are included in the rates described in (1)(a) through ~~(1)(d)~~:
 - (a) general supervisory services of the medical director; and
 - (b) participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.
- (5) For services not described in (4), Medicaid will pay the hospice for those physician services furnished by hospice employees or under arrangements with the hospice in accordance with ARM 37.86.101, 37.86.104, and 37.86.105. Reimbursement for these physician services is included in the amount subject to the hospice limit described in (6). Services furnished voluntarily by physicians are not reimbursable.
- (6) Services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are not considered hospice services and are not included in the amount subject to the hospice payment limit.
- (7) Medicaid reimbursement to a hospice in a cap period is limited to a cap amount established using Medicare principles.
- (8) The department will notify the hospice of the determination of program reimbursement at the end of the cap year.
- (9) Payments made to a hospice during a cap period that exceed the cap amount are overpayments and must be refunded.
- (10) The department adopts and incorporates by reference the Hospice Rates ~~FFY-25~~ fee schedule, effective October 1, ~~2024~~ 2025, which sets forth Medicaid hospice reimbursement rates based on the hospice wage index that is published annually by the Centers for Medicare & Medicaid Services. ~~Copies of the department's current~~ The fee schedules are ~~is~~ posted at <https://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Senior and Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210. Pursuant to 2-4-307(9), MCA, future updates to the fee schedule to conform with the hospice wage index issued by the Centers for Medicare & Medicaid Services are incorporated by reference without additional rulemaking, and are applicable as of the date specified in the updated fee schedule.

Authorizing statute(s): 53-6-113, MCA

Implementing statute(s): 53-6-101, MCA

General Reasonable Necessity Statement

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.802 and 37.40.830 pertaining to hospice care.

ARM 37.40.802

The department proposes to amend this rule to update the references to federal regulations to the current version of the Code of Federal Regulations. Updating these references is necessary to ensure the hospice program rules adopt and incorporate by reference the most current federal regulations applicable to the program. The proposed rule change is also necessary to ensure Montana's hospice Medicaid program remains compliant with federal requirements.

The department also proposes updating the mailing address for the Senior and Long-Term Care Division, removing the unnecessary street address to ensure there is no confusion as to where one sends a request for a copy of the CFRs relevant to this rule.

ARM 37.40.830

The department proposes to amend this rule to update the Medicaid hospice reimbursement fee schedule referenced in (10) to align with changes in federal hospice reimbursement rates set by the Centers for Medicare & Medicaid Services (CMS) in the Federal Register effective October 1, 2025. The proposed rule change is necessary to pay Medicaid providers according to the current Medicare fee schedule.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 2.6%, 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 fiscal year (FY) 2026 wage index has decreased for Carbon, Stillwater, and Yellowstone Counties by approximately 3.1%. The wage index for Cascade County increased by 0.12%, and the wage index for Missoula County increased by approximately 2.15%. In addition, the FY 2026 wage index shows that Lewis and Clark, Jefferson, Broadwater, and Gallatin Counties are considered urban rather than rural. Gallatin County will experience an increase in the wage index of approximately 0.36%, and Lewis and Clark, Broadwater, and Jefferson Counties' wage index will remain unchanged from FY 2025. The remainder of the Montana counties are subject to the rural index rate, which increased by approximately 29.4%. Three hospice providers will be subject to the non-compliant FY 2026 Medicaid hospice rates and will see a 4% point reduction to the market basket index 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 department is also proposing to amend the rule so that future changes made to the hospice fee schedule based on the annual changes made by CMS to the hospice wage index are incorporated by reference without additional rulemaking. This proposed change is being made pursuant to 2-4-307(9), MCA, which allows for the automatic updating of department rules pertaining to Medicare fee schedules issued by CMS.

Historically, the department has been unable to timely update hospice reimbursement rates in accordance with the annual changes made by CMS to the hospice wage index due to the need to engage in annual rulemaking to implement the rate changes. This delay has resulted in untimely payments to hospice providers and required claim adjustments. The proposed rule change will ensure that Medicaid hospice providers are timely paid the correct rate of reimbursement.

Small Business Impact

Pursuant to 2-4-111, MCA, the department has determined that the class of small businesses affected by the proposed rules are those providing Medicaid hospice services. The probable and significant direct effects on these small businesses are that they will receive an aggregate reimbursement rate increase of 2.6% for Medicaid hospice services that are provided.

Fiscal Impact

The proposed aggregate rate increase of 2.6% will have a fiscal impact on the hospice program. Funds impacted are the federal Medicaid fund source (03583) and the general fund source (01100). The estimated total cost of the proposed rate increase is \$103,500. In FY 2025, approximately 204 Medicaid recipients received the Hospice benefit. The majority of the Medicaid hospice program's budget reimburses hospice services in nursing facilities through room and board for inpatient nursing facility hospice.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of the rulemaking actions proposed by the department. 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 emailed, mailed or otherwise delivered to the contact person above.

Medicaid Performance Based Statement

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.

Rule Reviewer

Robert Lishman

Approval

Charles T. Brereton, Director
Department of Public Health and Human Services