

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 37.40.830 pertaining to hospice) PROPOSED AMENDMENT
reimbursement)

TO: All Concerned Persons

1. On May 31, 2024, at 10:00 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. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85606218557?pwd=cUdwSjdzVW0vVmN5VkxEd2dLOHp5QT09>, meeting ID: 856 0621 8557, and password: 308965; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 856 0621 8557, and password: 308965. Find your local number: <https://mt-gov.zoom.us/u/kcffoZKD2w>.

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 May 17, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.40.830 HOSPICE, REIMBURSEMENT (1) through (9) remain the same.

(10) The department adopts and incorporates by reference the Hospice Rates FFY23 24 fee schedule, effective October 1, ~~2022~~ 2023. Copies of the department's current fee schedules are 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, ~~1100 N. Last Chance Gulch~~, P.O. Box 4210, Helena, MT 59604-4210.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule, effective October 1, 2023. This new fee schedule is being proposed in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare & Medicaid Services (CMS) under the final Medicare hospice rule published on August 2, 2023. 88 FR 51164 (Aug. 2, 2023).

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 3.1%, 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 2024 wage index has increased for Carbon, Stillwater, and Yellowstone Counties by approximately 1.6%. The wage index for Cascade County has decreased by 3.3%. The wage index for Missoula County has decreased by approximately 1.3%. The remainder of the Montana counties are subject to the rural index rate, which decreased by approximately 1%. Additionally, two hospice providers will see a hospice reimbursement rate decrease of 4% 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 proposed rule amendment is necessary to pay Medicaid providers according to the current Medicare fee schedule, effective October 1, 2023. Failure to amend the rule will result in a deficient state hospice reimbursement rate from the current federal rate, which would result in underpayment to hospice providers and introduce an inability for the state to comply with federal requirements pertaining to hospice providers.

Fiscal Impact

The proposed rule amendment will have a fiscal impact on the Hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In State Fiscal Year (FY) 2023, approximately 229 Medicaid recipients received the hospice benefit. The projected budget for 2024 is \$3.4 million, which reflects an increase of \$28,838.00 from FY 2023.

The majority of the Medicaid hospice program's budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

5. The increase in hospice rates will be applied retroactively to October 1, 2023. Any decreases in hospice rates will not be applied retroactively and will be effective upon adoption of the amendments proposed in this rulemaking notice.

6. 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: Bailey Yuhas, 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 hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., June 7, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. 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 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. 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.

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

Certified to the Secretary of State April 30, 2024.