

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 37.40.802 and 37.40.830) PROPOSED AMENDMENT
pertaining to hospice reimbursement)

TO: All Concerned Persons

1. On June 15, 2023, at 1:30 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 rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/88276725812?pwd=YjZZNHNOVVJITUhfBWhhVGtLMGIqUT09>, meeting ID: 882 7672 5812, and password: 182724; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 882 7672 5812, and password: 182724. Find your local number: <https://mt-gov.zoom.us/u/kcmAXiy3UP>.

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 1, 2023, 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) 444-3026; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

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, ~~2024~~ 2022:

(a) through (2) remain the same.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) through (9) remain the same.
(10) The department adopts and incorporates by reference the Hospice Rates ~~FFY22~~ FFY23 fee schedule, effective October 1, ~~2024~~ 2022. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Senior

& 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 the hospice care administrative rules in two ways. First, the department proposes to amend ARM 37.40.802 to update references to federal regulations within the rule to refer to the most current version of the Code of Federal Regulations. Updating these references is necessary to ensure the hospice program rules adopt by reference the current federal regulations applicable to the program.

Second, the department proposes to amend ARM 37.40.830 to update the Medicaid hospice reimbursement fee schedule referenced in (10), in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare & Medicaid Services (CMS) in the Federal Register effective October 1, 2022. This proposed rule amendment is necessary to pay Medicaid providers according to the current Medicare fee schedule, effective October 1, 2022. In order to pay Medicaid hospice providers according to the Medicare fee schedule and rate methodology, the rule must be updated to reference the most current Medicare hospice fee schedule.

Fiscal Impact

The proposed amendment to ARM 37.40.830 is estimated to have a fiscal impact of \$171,044 on the hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In State Fiscal Year (SFY) 2022, approximately 381 Medicaid beneficiaries received the hospice benefit.

Much 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.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 3.8%, 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 2023 wage index has decreased for Carbon and Yellowstone Counties by approximately 5%. Cascade County's wage index increased by 1.58%, and the Missoula County wage index decreased by approximately 0.58%. The remainder of the Montana counties are subject to the rural index rate which decreased by approximately 5%.

Additionally, two hospice providers will see a hospice reimbursement rate decrease of 2% 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 increase in hospice rates will be retroactive to October 1, 2022. Any decreases in hospice rates will not be applied retroactively and would be effective upon adoption of the amendments proposed in this proposal notice.

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: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-3026; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., June 23, 2023.

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

Certified to the Secretary of State May 16, 2023.