BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of amendment of ARM 37.79.326, 37.85.104, 37.85.105, 37.85.106, 37.86.3607, and 37.87.1226 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1037 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 646 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended the following rules as proposed: ARM 37.79.326, 37.85.106, 37.86.3607, and 37.87.1226.

3. In the proposal notice, the department inadvertently proposed 4% increases to rates for some services on the substance use disorder (SUD) non-Medicaid fee schedule. Those rates had already increased to 100% of benchmark in October 2022. The department, therefore, has removed the SUD non-Medicaid fee schedule cited in ARM 37.85.104(1)(d) from this rule notice to permit finalizing remaining rates without delay. At a future date, the department intends to file a rule notice relating to the non-Medicaid SUD rates.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the dates stated:

(a) through (c) remain as proposed.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective October 1, 2022 ~~July 1, 2023~~.

(2) remains as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (2)(a) remain as proposed.

(b) Fee schedules are effective July 1, 2023. The conversion factor for physician services is $44.32. The conversion factor for allied services is $26.13. The conversion factor for mental health services is $22.67. The conversion factor for anesthesia services is ~~$30.57~~ $32.04.

(c) Policy adjustors are effective July 1, 2022. The maternity policy adjustor is 100%. The family planning policy adjustor is 105%. The psychological testing policy adjustor is ~~145%~~ 200%. The psychological testing policy adjustor applies only to psychologists.

(d) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: Two commenters requested the department consider raising shelter care rates equivalent to the Governor's provider rate study benchmarks to ensure the continued availability of shelter care for youth in the continuum of care.

RESPONSE #1: The department thanks the commenters for their comment, but notes that the comment is outside the scope of this rulemaking.

COMMENT #2: The commenters' assisted living business cannot support the best level of care with staffing, nutritious food, and engaging activities at the current rate. An increase in the daily rate would allow the provider to compete with local fast-food companies for staff. They proposed an increase to the daily rate from $104.31 to an amount ranging anywhere from $125 to $145, which they said would realistically ensure excellent care with qualified staff and meet monthly expenses.

RESPONSE #2: The residential habilitation Level 1 Assisted Living and Adult Foster Care rate was set after consideration of the results of the provider rate study and the available appropriation. The provider rate study considered the factors listed by the commenter. Additionally, the department considered the non-exhaustive list of factors under 53-6-113, MCA, when setting rates. The rate will remain as proposed.

COMMENT #3: One commenter expressed support for the proposed Medicaid reimbursement rate increase for assisted living facilities but raised concern about room and board allowances, which have remained unchanged since 2009. The commenter advocated for a methodology in line with social security adjustments, as outlined in Senate Bill (SB) 296, and requested implementation of a Level 2 - Assisted Living Behavioral Management rate, emphasized the need for a process to

update rates for inflation and labor costs, and recommended amendments to the proposed rules.

RESPONSE #3: The department thanks the commenter for the comment, but notes that SB 296 was not enacted into law and that the comments regarding room and board allowances are outside the scope of this rule making. The department established a Level 2 - Assisted Living Behavioral Management rate and is committed to establishing criteria for Level 2 - Assisted Living Behavioral Management coverage. The rate will remain as proposed.

COMMENT #4: A commenter states there is a discrepancy in the proposed amendment to ARM 37.87.1226 and noted an oversight in the reimbursement rate for activities of daily living (ADLs). The commenter indicated ADLs, which include essential tasks like bathing and meal preparation, require more skill and training and, therefore, should be reimbursed at a higher rate than other services like community supports and escort.

RESPONSE #4: The department reviewed the three rates in question and confirmed an inconsistent application of the occupational category and the amount for staff travel costs. The department corrected this inconsistency by applying the same occupational category for all three services and reallocating the total amount of staff travel, primarily to the Community First Choice/Personal Assistance Services (CFC/PAS) rate, and a lesser amount to the Medical Escort Rate for occasions where Medicaid travel is not available. From these rates, the percent to the benchmark calculation was applied using the same percentages as the original calculation. The staff travel factor for the Community Supports rate was eliminated, as mileage is available with this service. The newly adjusted rates, which apply to both state plan and Big Sky Waiver Services, are shown below with the originally proposed incorrect rates stricken through and the correct rates underlined:

CFC/PAS	~~$5.86~~ $7.99
Medical Escort	~~$8.46~~ $7.53
Community Supports	~~$8.40~~ $7.43

The same anomaly was found in the self-directed (SD) rates. Those rates were adjusted in the same manner as described above. The newly adjusted rates are as follows:

SD CFC/PAS	~~$6.52~~ $6.82
SD Medical Escort	~~$7.00~~ $6.35
SD Community Supports	~~$6.90~~ $6.25

Last it was noted that non-medical mileage under state plan CFC/PAS and SD CFC/PAS was not addressed in the study; however, it should be equal to the rate determined for the Big Sky Waiver, or $0.51/mile, and the rate has been revised accordingly.

COMMENT #5: Rate adjustments to neurological services on the RBRVS fee schedule following the provider rate study do not consider general inflation, post-pandemic operating costs, and pay discrepancies between mental health and physical medicine providers. Proposed rate increases do not neutralize rate decreases experienced since 2019. Reimbursement rates for a typical neuropsychological evaluation were greater ten years ago than they are in the proposed 2024 RBRVS fee schedule. The frequency/usage of a code is a flawed metric of RBRVS as highly specialized services will never have a high usage or variability in usage due to a limited number of clinicians able to perform the services. Poor reimbursement rates lead to a loss of providers and longer waitlists for Medicaid recipients, resulting in a decrease in available services and especially impacting neurological evaluation services.

RESPONSE #5: The department's goal is to maintain access for behavioral health services through the provider rate study. Psychological testing codes were not considered within the provider rate study. The department, however, recognizes this service is an essential part of the behavioral health continuum with current access challenges. The department acknowledges rates for psychological testing codes have not been addressed since 2019. While the department is unable to update or impact RVUs in response to this comment, the department will increase the psychological testing policy adjuster to 200%. The department believes this will help increase access to psychological testing services. The psychological testing policy adjuster is adopted in ARM 37.85.105 and, in response to this comment, will be updated in rule and reflected on the July 2023 RBRVS Fee Schedule for SFY 2024.

COMMENT #6: The department received several questions and concerns regarding the 4% rate increase to Applied Behavior Analysis (ABA) services. Some commenters expressed the opinion that the 4% rate increase is not sufficient to address inflation or meet legislative intent and requested the department double-check the numbers. Other commenters expressed the opinion that the 4% rate increase does not reflect the recommendations in the Guidehouse study or that BCBA rates were established on incorrect assumptions about the Guidehouse Rate Study's scope.

RESPONSE #6: The department thanks everyone for the comments, insights, and recommendations regarding this topic. The department would like to clarify that the Behavioral Support Services in the Developmental Disabilities 0208 Waiver were part of the Guidehouse rate study. The ABA rates included in this rulemaking, however, were not part of that study and, thus, Guidehouse did not provide benchmark rates for these services. The 2023 Legislature appropriated funding for a 4% provider rate increase for services not included in the Guidehouse study. This 4% rate increase, approved by the legislature, is based off the resource-based relative value scale (RBRVS) calculations and policy adjusters.

COMMENT #7: One commenter stated that the 2025 Biennium Provider Rate Graphic with a current rate of 76% was misleading, implying that these services would be seeing an increase commensurate with other services. The commenter

requested in the future, that this information be communicated more clearly to legislators and providers by identifying in the figures whether funding for a given category is from 0208 Waiver or Medicaid.

RESPONSE #7: The department appreciates this feedback and would like to clarify that the 0208 Waiver is a Medicaid program. Additionally, the commenter's request is outside the scope of this rulemaking which is to implement the 2023 legislature-approved rates.

COMMENT #8: A commenter stated that rate changes from a previous rulemaking reduced the reimbursement for co-occurring clients receiving substance use disorder (SUD) Intensive Outpatient (ASAM 2.1) services.

RESPONSE #8: The department thanks the commenter for the comment, but notes that this comment is outside the scope of this rulemaking. The department amended policy during the previous rulemaking to allow co-occurring mental health services to be billable concurrently with the weekly bundled rate for ASAM 2.1. The bundled rate was developed by the contractor that performed the provider rate review for the department. The department will take the comment under consideration.

COMMENT #9: A commenter stated that rates will not sustain ASAM 3.1 services due to staffing requirements and asked the department to reevaluate the rates.

RESPONSE #9: Program costs were included in the methodology used to develop the rates. The proposed bundled rates for substance use disorder levels of care were developed by the contractor that performed the provider rate review for the department. The contractor reviewed the ASAM Criteria and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, clinical supervision, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation. However, the department will take the comment under consideration.

COMMENT #10: A commenter asked why the rates for adult mental and substance use disorder targeted case management (TCM) are different on the behavioral health TCM fee schedule.

RESPONSE #10: The department agrees the rates should be aligned, and fee schedules will be adjusted accordingly.

COMMENT #11: A commenter provided examples of inconsistencies for crisis services between non-Medicaid and Medicaid fee schedules.

RESPONSE #11: The non-Medicaid and Medicaid fee schedules are intended to be aligned, and the fee schedules will be adjusted accordingly.

COMMENT #12: A commenter stated that Mobile Crisis Response Services rates won't cover costs associated with operation of a mobile crisis team. The commenter also suggested a productivity factor be included in the rates to support reduced productivity associated with overnight trends, decreased productivity times, and non-face-to-face interactions due to safety concerns or logistical barriers.

RESPONSE #12: Reimbursement rates are intended to cover the costs of services being delivered to individuals that meet eligibility for either Medicaid or Non-Medicaid coverage. The proposed bundled rates for mobile crisis response services were developed by the contractor that performed the provider rate review for the department. The contractor reviewed and considered several factors in the development of the rates including staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #13: A commenter suggested the department expand coverage for Non-Medicaid Mental Health Crisis Services for individuals that do not qualify for Medicaid and whose income falls between 0-150% of the federal poverty level (FPL).

RESPONSE #13: The department acknowledges receipt of this comment, but notes that the comment is outside the scope of this rulemaking. The department recognizes that providers and partner agencies have invaluable knowledge and experience regarding the delivery of services. The department will take this recommendation under consideration.

COMMENT #14: A commenter offered support for the proposed rate increases, in particular comprehensive school and community treatment (CSCT) services.

RESPONSE #14: The department acknowledges this feedback and believes that the proposed rate increases will enhance CSCT service provision.

COMMENT #15: A commenter requested the department consider returning to the fee for service reimbursement model of the 15-minute unit rate from the current daily rate to address provider-identified unintended consequences.

RESPONSE #15: The department acknowledges this comment and will take this under advisement.

COMMENT #16: One commenter recommended that DPHHS use the cost analysis performed by Guidehouse to inform an adequate rate increase for ABA services.

RESPONSE #16: The department appreciates the recommendation. However, as indicated above, the 2023 Legislature appropriated funding for a 4% rate increase for all services not included in the Guidehouse rate study.

COMMENT #17: One commenter recommended a geographic rate differential for ABA services due to increases in cost of living.

RESPONSE #17: The department appreciates the recommendation. However, the implementation of a geographic rate differential is outside the scope of this rulemaking. As indicated above, the 2023 Legislature appropriated funding for a 4% rate increase for services not included in the Guidehouse study which includes ABA services; this rulemaking is intended to implement that rate increase.

COMMENT #18: The department received a public comment from the Montana Medical Association stating "the amendment to ARM 37.85.105(2)(b) has adjustments for the conversion factor for physician services, allied services, and mental health services. There is not an adjustment in the conversion factor for anesthesia services. The MMA requests the same consideration for anesthesia services."

RESPONSE #18: The physician conversion factor is subject to annual consumer price index (CPI) rate increases 4.8%, effective June 30, 2022, as provided in 53-6-125, MCA. Allied and mental health services are not subject to the annual CPI rate increase; however, they were appropriated a 4% provider rate increase through legislation. The physician conversion factor was exempt from this 4% increase. Considering these factors, the department agrees to increase anesthesia services by the 4.8% CPI.

COMMENT #19: A commenter asked for clarification about providing targeted case management (TCM) for non-Medicaid mental health crisis clients, including who TCM can be provided to and when it can be provided.

RESPONSE #19: This comment is outside the scope of this rulemaking. Service requirements for covered services can be found in the BHDD Medicaid manual. The requirements for mental health TCM can be found in Policy 405.

6. These rule amendments are retroactively effective July 1, 2023.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State August 29, 2023.