

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

In the matter of the adoption of New Rule I pertaining to revising nursing facility reimbursement rates for state fiscal year 2018) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 15, 2017, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rule.

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 August 2, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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 adopted provides as follows:

NEW RULE I NURSING FACILITY REIMBURSEMENT (1) For nursing facility services, other than Intermediate Care facilities for Individuals with Intellectual Disabilities (ICF/IID) services, provided by nursing facilities located within the state of Montana, the Montana Medicaid program will pay a provider, for each Medicaid patient day, a per diem rate determined in accordance with this rule, minus the amount of the Medicaid member's patient contribution.

(2) Effective October 1, 2017 through June 30, 2018, the rate for nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the component defined in ARM 37.40.307(2)(a) and (b).

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing a new rule pertaining to revising nursing facility reimbursement rates for SFY 2018.

The proposed Medicaid nursing facility rates will be effective October 1, 2017, for the remainder of state fiscal year (SFY) 2018.

The reason for the proposed rule is as follows:

NEW RULE I

The Department of Public Health and Human Services (department) administers the Montana Medicaid program to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. The Legislature delegates authority to the department to set the reimbursement rates based on the amount of available funding Montana pays Medicaid and non-Medicaid providers for members' covered services.

The purpose of the proposed rule is to revise provider rates to implement the mandated legislative reductions in Senate Bill (SB261), passed by the 65th Montana Legislature if overall state general fund revenue projections do not meet certain levels on August 15, 2017.

SB261 requires the department to decrease expenditures if certain state revenue levels are not achieved on August 15, 2017. This rule is being proposed with an effective date of October 1, 2017, to comply with the reductions mandated by the Legislature in anticipation that these revenue levels will not be met. If necessary revenue is received, the proposed reductions will not be adopted as proposed. The department has chosen to notice these rules at this time rather than wait until after the August 15, 2017, level of revenue is known because delay of notice and implementation would increase the size of the proposed reductions as the same dollar amount of reduction would need to occur over fewer months of the fiscal year.

Annually, Montana Medicaid completes a cost-to-rate analysis to determine the level of provider costs covered by the total provider reimbursement rate. Utilizing the historical cost to rate report data, the department has determined the new proposed rates are consistent with efficiency, economy, and quality of care. These rates are sufficient to enlist enough providers so that care and services under the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Fiscal Impact

Due to anticipated decreases in revenues, the department is implementing an across-the-board reduction in payments for certain Medicaid services and supplies reimbursed through RBRVS, APR-DRG, Outpatient Prospective Payment System (OPPS) for outpatient hospital services, fee for service, nursing facility reimbursement, and Medicare payment methodologies. The percentage of reduction in overall expenditures needed to stay within legislatively approved

appropriations in HB2 and SB261 is calculated at 3.47%. The reduction of 3.47% is to the general fund portion of the funding for nursing facility reimbursement which is made up of general fund and state special funding to match to the federal funding decreasing the impact to nursing facility reimbursement. State special funding is not impacted by the decrease required by SB261.

Nursing facility reimbursement is a decrease of 2.64% from the July 1, 2017, provider rates. Total funding for provider rates include the legislative appropriated state and federal funds plus estimated patient contributions. Patients, depending on their income, are required to pay a portion of the rate to providers. The estimated total funding available for SFY 2018 for nursing facility reimbursement is estimated at approximately \$187,546,323 of combined state funds and federal funds, including \$32,324,810 in patient contributions minus the SB261 reduction of \$3,718,147. SB261 requires a reduction in expenditures for provider rates based on state revenue level not achieved by August 15, 2017. This reduction to nursing facility providers is \$3,718,147 and is taken from the appropriated state and federal funds and not patient contributions.

Given the effective date of this rule, October 1, 2017 (1/4 of SFY2018), 25% of the total funding and days were taken out of the rate calculation (leaving \$140,659,743 and 751,507 days), in order to calculate the new rate for the remaining 9 months of the fiscal year (October 1, 2017, through the end of the fiscal year, June 30, 2018).

Anticipated days for SFY2018 are 1,002,009 using estimates from SFY2017 Medicaid paid days.

These numbers do not include the additional funding nursing facilities receive for at risk provider funds or direct care wage funding.

Seventy-three nursing facility providers participated in the Medicaid nursing facility payment program and approximately 4,200 received services in nursing facilities reimbursed by Medicaid.

5. The department intends the proposed rule amendments to be applied effective October 1, 2017.

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: Kenneth Mordan, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 18, 2017.

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 or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail (e-mail) on July 10, 2017.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

11. 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/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

/s/ Laura Smith for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State July 10, 2017.