

**DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN SERVICES**



Brian Schweitzer  
GOVERNOR

Anna Whiting Sorrell  
DIRECTOR

STATE OF MONTANA

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July 23, 2010

Representative Diane Sands  
Children, Families, Health and Human Services Interim Committee  
P.O. Box 201706  
Helena, Mt 59620-1706

Re: DPHHS written response, pursuant to §2-4-406, MCA, to the Committee's July 9, 2010, objection to MAR 37-509 rule adoption notice

Dear Chairwoman Sands:

I am responding to your July 9, 2010, letter, which states that members of the Children, Families, Health and Human Services Interim Committee have notified you that they object to DPHHS' adoption of amendments to Administrative Rule of Montana (ARM) 37.85.212 -- Resource Based Relative Value Scale (RBRVS) Reimbursement for Specified Provider Types. For the reasons stated in this letter, I respectfully disagree with the committee members who conclude that ARM 37.85.212 conflicts with statute and request that the committee withdraw its objection.

ARM 37.85.212, which was adopted in 1997, describes the methodology the State of Montana uses to set the reimbursement rates paid to 20 types of health care professionals<sup>1</sup>, including licensed physicians, for services provided to Medicaid recipients. Sections 53-6-124 through 127, MCA, pertaining to the RBRVS method, specifically require DPHHS to use the RBRVS methodology to set licensed physician's reimbursement rates and ARM 37.85.212 conforms to that requirement.

The amount of reimbursement paid to a provider is a function of both the methodology, and the amount of revenue appropriated to pay for services. DPHHS annually amends ARM 37.85.212 to state Montana Medicaid's RBRVS reimbursement rates for the next state fiscal year (SFY) based on the Legislature's appropriation for that fiscal year – the methodology remains constant but the rates change based on appropriations. Sections 53-6-124 through 127, MCA, state the rate methodology for physicians, which the Department uses, but do not appropriate funds for increasing licensed physician's Medicaid reimbursement rates.

The specific statute on DPHHS's authority to set rates is § 53-6-113 (3), MCA.

<sup>1</sup> Physicians, mid-level practitioners, podiatrists, physical therapists, occupational therapists, speech therapists, audiologists, optometrists, opticians, providers of clinic services, providers of EPSDT services, licensed psychologists, licensed clinical social workers, licensed professional counselors, dentists providing medical services, providers of oral surgery services, providers of pathology and laboratory services, independent diagnostic testing facilities, school based services, and QMB and EPSDT chiropractic services.

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The statute applicable to spending reductions is § 17-7-140, MCA. This statute specifically gives the Executive Branch the authority to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium when a general fund budget deficit exists.

Sections 53-6-124 through 127, MCA, pertaining to the RBRVS method, were enacted in 2007. Section 17-7-140, MCA pertaining to reductions in spending was enacted in 1991. Section 17-7-140 (2) provides specific guidance on what reductions in spending may not be directed by the Governor. The Department believes exempt increases for Medicaid fees paid to licensed physicians from the Governor's spending reduction authority would have to be specifically listed in § 17-7-140 (2), MCA as an area of state spending that cannot be reduced.


Sections 53-6-124 through 127, MCA, apply to one topic and one provider group—Medicaid reimbursement rates for licensed physicians. These statutes are silent regarding spending reductions when there is a general fund deficit. The statutes specifically require Montana Medicaid to use the RBRVS rate setting methodology for licensed physicians, which DPHHS uses. These statutes, however, do not appropriate funds to be used exclusively to pay licensed physician's Medicaid reimbursement. They do not compel a rate increase for licensed physicians in SFY 2011 or require that Montana Medicaid give preference to the payment of licensed physician rate increase over all other programs and services administered by the Department.

To reduce spending in SFY 2011, DPHHS sets the SFY 2011 Medicaid rate for all RBRVS providers, including licensed physicians, at the SFY 2010 level. DPHHS is attempting to hold all providers' reimbursement rates at current levels. DPHHS was aware of and considered §§ 53-6-124 when it set rates at the SFY 2010 level. These statutes do not require Medicaid reimbursement rates to licensed physicians to increase regardless of the impact on all other programs funded by the State of Montana. As stated in the notice of proposed amendment:

The Department considered the alternative of increasing Medicaid fees paid to licensed physicians and decreasing other providers' fees more. This solution to the current revenue shortfall would have a greater adverse impact on more Medicaid providers and clients. The department is attempting to maintain fees at the 2010 level for all providers and avoid lopsided adverse impacts of the shortfall in the state's revenue.

I hope that the Interim Committee will consider §§ 53-6-124 through 127 in the context of a budget deficit and the requirement of § 17-7-140 and withdraw its objection to adoption of MAR 37-509 rule adoption notice.

Sincerely,

  
*Mary E. Dalton*  
*acting for*

Anna Whiting Sorrell  
Director

Med/Legislature/Rep Sands

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