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MONTANA SECRETARY OF STATE

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Montana Administrative Register Notice 37-728

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
[37.85.105](#) and [37.86.1807](#) pertaining to) PROPOSED AMENDMENT
Effective Dates of Montana Medicaid)
Provider Fee Schedules)

TO: All Concerned Persons

1. On November 19, 2015, at 10:00 a.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 amendment of the above-stated rules.

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 November 12, 2015, 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 dphslegal@mt.gov.

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

[37.85.105](#) EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) and (2) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM [37.86.805](#), is effective ~~July 1, 2015~~ January 1, 2016.

(d) The Relative Values for Dentists, as provided in ARM [37.86.1004](#), reference published in 2015 resulting in a dental conversion factor of \$33.18 and fee schedule is effective ~~July 1, 2015~~ January 1, 2016.

(e) through (k) remain the same.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, ~~December 2014~~ January 2016, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM [37.86.1802](#), effective ~~July 1, 2015~~ January 1, 2016. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM [37.86.1807](#), is effective ~~July 1, 2015~~ January 1, 2016.

(m) through (o) remain the same.

(p) The ambulance services fee schedule, as provided in ARM [37.86.2605](#), is effective ~~July 1, 2015~~ January 1, 2016.

(q) and (r) remain the same.

(s) The optometric fee schedule provided in ARM [37.86.2005](#), is effective ~~July 1, 2015~~ January 1, 2016.

(4) through (6) remain the same.

AUTH: [53-2-201](#), [53-6-113](#), MCA

IMP: [53-2-201](#), [53-6-101](#), [53-6-402](#), MCA

[37.86.1807](#) PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) and (2) remain the same.

(3) The department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous codes as described in (1) will include fees set and maintained according to the following methodology:

(a) 100% of the Medicare region D allowable fee; or

(b) When there is no Medicare region D allowable fee established, 100% of the Medicaid allowable fee established by the department;

~~(b)~~ (c) Except as provided in (4), for all items for which no Medicare or Medicaid allowable fee is available, the department's fee schedule amount will be 75% of the provider's usual and customary charge.

(i) For purposes of (3)~~(b)~~(c) and (4), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

(A) through (4) remain the same.

AUTH: [53-2-201](#), [53-6-113](#), MCA

IMP: [53-2-201](#), [53-6-101](#), [53-6-111](#), [53-6-113](#), ~~[53-6-141](#)~~, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM [37.85.105](#) and [37.86.1807](#) pertaining to updating effective dates of Montana Medicaid provider fee schedules.

Medicare implements updates to procedure codes in January every year that reflect any new code additions, code deletions, or changes to existing codes descriptions. Several Montana Medicaid programs utilize Medicare pricing for some procedure codes and when codes are deleted or added. These proposed amendments to rules are necessary because Montana Medicaid programs must stay current and compliant with the Medicare procedure code updates.

The amendments also propose to implement a change to fees for incontinence supplies and to add two new dental preventative procedure codes for adults, both of which proposed changes should result in lower overall costs for incontinence supplies and for dental services.

ARM [37.85.105](#)

The department is proposing to change the fee schedule effective date in (3)(c), (3)(d), (3)(l), (3)(p), and (3)(s) from July 1, 2015 to January 1, 2016 to reflect the current procedure codes and reimbursement amount for codes that are reimbursed with a resource-based relative value scale (RBRVS) Medicare methodology. These amendments will permit the department to update fee schedules to reflect the most current Medicare fees, additions, deletions, or changes to procedure codes. The department is proposing to change the fee schedule effective date in (3)(d) from July 1, 2015 to January 1, 2016 to reflect the addition of two new dental preventive procedure codes for adults. The department decided to add the dental procedure codes to the fee schedule based on recommendations from the Montana Dental Association that these procedure codes are evidence-based in the prevention of dental caries.

ARM [37.86.1807](#)

When Medicare releases the code file with deletions, additions, and changes to descriptions with a January effective date, the department reviews this file and applies any of the changes to the program fee schedules that utilize Medicare fees codes. The department also reviews the new codes if they replace deleted ones or are in addition to existing codes currently covered. The department examines and makes appropriate changes to any descriptions of codes that may have resulted with the release of the file. Once this review and changes to the fee schedule are made, the program staff will release a current durable medical equipment fee schedule with a January 2016 effective date and change the date in the corresponding program's rule.

The department is proposing to add a new (3)(b) to reflect that when Medicare does not establish an allowable fee, the department will pay durable medical equipment (DME) items at 100% of the fee that is established by the department. Except for incontinence supplies, the department has already established fees and these fees have been published in the department's fee schedule for durable medical equipment. Thus, the proposed change will have no substantive impact on fees for these items.

However, for incontinence supplies, the department has determined that it is overpaying for incontinence supplies. In a comparison of Montana's average reimbursement to the average reimbursement rate of 15 other states, who have a set fee schedule rate, Montana's overall reimbursement rate is higher than all states except Indiana. Idaho and Wyoming both use a specific fee-for-service rate for the same services as Montana and those states are reimbursing at an average rate of 25.68% less than Montana.

From this comparison, it was determined that Montana Medicaid should change to a set rate fee schedule for incontinence supplies and to use an average of the Idaho and Wyoming fee schedules as these states are very similar in their rural nature as Montana. The proposed fee schedule can be found online at <http://medicaidprovider.mt.gov/enduserproposedfs>.

5. The department intends to adopt these rules as effective on January 1, 2016.

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., November 27, 2015.

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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 rules 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.

With the exception of the proposed change to ARM [37.85.105](#)(3)(d) to add dental preventative procedure codes and to [37.86.1807](#)(3)(b) as applied to incontinence supplies, the department has determined that the proposed program changes presented in this notice are not subject to the requirement for performance-based measures because the changes either implement federal requirements or do not impact the fee that the department has already established for durable medical equipment for which Medicare has not established a fee.

The proposed addition of dental preventative procedure codes can be assessed by performance-based measures. The effectiveness of the proposed addition will be measured by:

1. Calculating the cost of dental caries treatment in the year following adoption of the proposed change;
2. Calculating the cost of dental caries treatment in the year prior to the adoption of the proposed change;
3. Comparing the two numbers, adjusting for any differences between the volume of claims between the two years.

The department would expect to see a savings in the amount of Medicaid funds paid out for claims for dental caries treatment.

The proposed change in the payment method for incontinence supplies can be assessed by performance-based measures. The effectiveness of the proposed change in payment method will be measured by:

1. Calculating the amount the department pays for claims for incontinence supplies in the year following adoption of the proposed change;
2. Calculating the amount the department paid for claims for incontinence supplies in the year prior to the adoption of the proposed change;
3. Comparing the two numbers, adjusting for any differences between the volume of claims between the two years.

The department would expect to see a savings in the amount of Medicaid funds paid out for claims for incontinence supplies.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

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Certified to the Secretary of State October 19, 2015.

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For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.