

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 37.40.830 pertaining to hospice ) PROPOSED AMENDMENT  
reimbursement )

TO: All Concerned Persons

1. On January 26, 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 amendment 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 January 11, 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 amended provides as follows, new matter underlined, deleted matter interlined:

37.40.830 HOSPICE, REIMBURSEMENT (1) and (2) remain the same.

(3) The department adopts and incorporates by reference 42 CFR 418.302, as amended August 6, 2015 and effective October 1, 2015 and 42 CFR 418.306, as amended August 6, 2015 and effective October 1, 2015, which sets forth the Medicare payment procedures. Copies of 42 CFR 418.302 and 42 CFR 418.306 are available at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

(4) through (11) remain the same.

(12) The hospice fee schedules are effective ~~January 1, 2016~~ October 1, 2016. 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, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

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 ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule referenced in (12), effective October 1, 2016, in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare and Medicaid Services (CMS) in the Federal Register effective October 1, 2016. Also being updated is the Code of Federal Regulations (CFR) references for 42 CFR 418.302 and 42 CFR 418.306 in (3), which are adopted and incorporated by reference. Medicaid hospice incorporates the Medicare reimbursement methodology and the reimbursement updates as specified in the Federal Register, by incorporating wage indexes and geographic factors specific for Montana counties.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 2.1 percent, as computed and published by CMS, which will apply to providers in all 56 counties. A 2.1 percent increase in the hospice reimbursement rate equals approximately \$113,400 of the Montana Medicaid Hospice program budget of \$5.4 million. Montana hospice rates are affected by a wage index applied geographically by county. The 2017 wage index has increased for Carbon, Yellowstone, and Golden Valley Counties by approximately 1.9 percent. Cascade County wage index increased by approximately 7.2 percent, and Missoula County wage index increased by approximately 5.9 percent. All other Montana counties are subject to the Montana rural wage index rate which increased by approximately 1.9 percent.

Additionally, four hospice providers will see a hospice reimbursement rate decrease of two percent for failure to comply with the federal quality data submission requirements during the prior fiscal year. Two of the four hospices found to be noncompliant with the quality data submission requirements are no longer active Medicaid hospice providers. A copy of the proposed hospice fee schedule can be found at <http://medicaidprovider.mt.gov>.

The increase in hospice rates will be retroactive to October 1, 2016. Any decreases in hospice rates will not be applied retroactively and will be effective upon adoption of the rule.

### Fiscal Impact

The ARM update will have a fiscal impact on the hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In FY 2016, approximately 370 Medicaid recipients received the hospice benefit.

A majority of the Medicaid hospice program's approximately \$5.4 million budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

Montana counties will see an increase from the 2016 funding levels. CMS has provided a 2.1 percent increase to the Hospice Medicaid rates across the country. Montana hospice rates are affected by a wage index applied geographically by

county. The 2017 wage index has increased for Carbon, Yellowstone, and Golden Valley Counties by approximately 1.9 percent. Cascade County wage index increased by approximately 7.2 percent, and Missoula County wage index increased by approximately 5.9 percent. All other Montana counties are subject to the Montana rural wage index rate which increased by approximately 1.9 percent.

CMS provided verification that four Montana hospices failed to comply with quality data reporting requirements in FY2016. Two of the four hospices listed are no longer active Montana Medicaid hospice providers. The remaining two hospices will see a rate reduction of 2 percentage points for failure to comply with the quality data submission requirements during this fiscal year.

5. The department proposes to apply increases in the hospice reimbursement rates retroactively to October 1, 2016. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal regulations. Decreases in hospice rates would not be applied retroactively, but would be effective upon adoption of the proposed rule amendment.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., February 3, 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. 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 rule 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.

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/ Marie Matthews for  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State December 27, 2016.