

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.307 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On July 7, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1038 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 663 of the 2023 Montana Administrative Register, Issue Number 13.

2. The department has amended the above-stated rule as proposed.

3. 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: A commenter states the proposed rate does not cover the actual cost of care.

RESPONSE #1: The nursing facility base rate was set after consideration of the results of the provider rate study and balancing of the factors that may be considered under 53-6-113, MCA, and ARM 37.40.307(2). In balancing these factors, the department's primary consideration was the availability of appropriated funds and availability of services.

COMMENT #2: A commenter states the funding for the nursing home rate increase proposed in this rule is less than the funding the department projected during the legislative session.

RESPONSE #2: The department accurately projects rates throughout the legislative session, but none of them are binding. In setting provider rates, including the rates generally applicable to nursing home services, the department has to consider many issues. In considering provider rates, the department determined that it needed to allocate (and, thus, partially hold back) appropriated funds to address the costs of complex care services in an effort to provide for the increased availability of services to meet complex care needs. This hold back of funds was applied equally across providers. Please also see the response to comment #1.

COMMENT #3: A commenter states the department should analyze the relationship between Medicaid rates, the Medicaid census, and survey deficiencies to be able to

make findings and assurances that payment rates appropriately account for costs of compliance with federal requirements.

RESPONSE #3: The department recognizes the relationship, as does the provider rate study. Please also see the response to comment #1.

COMMENT #4: A commenter states facilities across the state are declining new admissions due to the current workforce shortage and elevated labor costs. As a result, individuals in need of post-hospital care are facing extended stays in hospitals, as they encounter difficulties in securing placement in skilled nursing facilities for further treatment.

RESPONSE #4: The department is aware of the issues raised by the commenter. The proposed rate significantly increases Medicaid nursing facility reimbursement by providing for a 23.02% rate increase compared to SFY 2023.

4. The department intends to apply the rule retroactively to July 1, 2023. A retroactive application of the proposed rule will not result in a negative impact to any affected party.

/s/ Heidi Sanders

Heidi Sanders
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.