

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 37.34.3005 and 37.86.3607) PROPOSED AMENDMENT
pertaining to amendments to fee)
schedules)

TO: All Concerned Persons

1. On July 27, 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 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 July 19, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, effective ~~July 1, 2016~~ October 1, 2017. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2016~~ October 1, 2017.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2016~~ October 1, 2017. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

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 Montana pays Medicaid providers for members' covered services.

The purpose of the proposed rule amendments is to update and set provider rates to take into consideration the funding appropriated by the 65th Montana Legislature. 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.

Updates to these rules are needed to: 1) reflect appropriations contained in House Bill 2 (HB2) adopted by the 65th Legislature; 2) reflect the mandated legislative reductions required to comply with Senate Bill (SB261) if revenue projections do not meet certain levels on August 15, 2017; and 3) update the Developmental Disabilities Program Manuals to reflect current fees and practice.

SB261 requires the department to decrease expenditures if certain state revenue levels are not achieved on August 15, 2017. These rules are 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 one of the necessary levels of revenue is received, the proposed reductions will be modified or eliminated prior to adoption of these rules. The department has chosen to notice these rules at this time rather than wait until after August 15, 2017 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.

Due to anticipated decreases in revenues, the department is implementing an across the board decrease in payment for certain Medicaid services and supplies. The reduction needed to stay within legislatively approved appropriations in HB2 and SB261 is calculated at 3.47%.

The department is proposing to amend ARM 37.34.3005 and 37.86.3607 pertaining to updated Medicaid Rates Manuals and updating effective dates to October 1, 2017.

These two rules pertain to the reimbursement of services provided to persons who are recipients of developmental disabilities services funded by the State of Montana with Medicaid monies. The proposed rules also are necessary to implement needed changes in the texts of the two manuals that are incorporated by reference in these rules.

Summary of Proposed Amendments – Developmental Disabilities Program

ARM 37.34.3005

The department proposes to amend the rule for the purposes of: changing text in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue Program Design and Monitoring, Children's Autism Training, Occupational Therapy, Physical Therapy, Speech Therapy, and Adaptive Equipment services in the 0667 waiver effective July 1, 2017, and CMS's subsequent approval of the discontinuation of those services. The department was advised to discontinue certain services due to implementation of similar services that will be available in Medicaid State Plan.

The department is also proposing to amend this rule to incorporate into the rule this new edition of the manual, to be dated October 1, 2017, which includes reductions in the rates of reimbursement for Medicaid funded home and community services.

ARM 37.86.3607

The purpose of this proposed amendment is to incorporate into the rule a new edition of the Montana Developmental Disabilities Program Manual of Service

Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, to be dated October 1, 2017. The change to the manual includes reductions in the rates of reimbursement.

Amendments to Manuals

"Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs"

1. The department is proposing to update all rates and remove references of the 0667 waiver from certain services that are still available under another operating waiver and to completely remove certain services only approved in the 0667 waiver per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue certain 0667 waiver services effective July 1, 2017, and CMS's subsequent approval of the discontinuation of those services.
2. The proposed effective date of the revised manual is October 1, 2017.
3. The proposed reimbursement fee adjustments are necessary to comply with HB2 appropriations and the reductions in appropriated funding for certain state services mandated by contingent reduction language of SB 261 adopted by the 65th Montana State Legislature.

"Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home"

1. The proposed effective date of the revised manual is October 1, 2017.
2. The link where the fee schedule is posted is changed to be consistent with the link in the rule text.
3. Removed reference to cost allocation payments for state employed Targeted Case Management staff.
4. The proposed reimbursement fee adjustments are necessary to comply with HB2 appropriations and SB 261 adopted by the 65th Montana State Legislature.

Fiscal Impact

The fiscal impact of the proposed changes to ARM 37.86.3005, implementing provider rate adjustments for DD providers will decrease total expenditures to

providers for state fiscal year 2018 by the sum of (\$4,139,972). These rates affect approximately 70 corporate providers of services.

The fiscal impact of proposed amendments to rates for services provided through the DD Waiver as mandated in SB 261 is:

DD Waiver FY 2018	General Fund (\$1,063,985)	Federal Funds (\$3,075,990)	Total Funds (\$4,139,972)
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The fiscal impact of the proposed change to ARM 37.86.3607, implementing provider rate adjustments for providers of developmental disabilities case management services will decrease total expenditures to those providers for state fiscal year 2018 by the sum of (\$163,445) in expenditures. These rates affect approximately 3 contracted agencies.

The fiscal impact of proposed amendments to rates for DD Targeted Case Management is:

DDP TCM SFY2018	General Fund (\$42,006)	Federal Funds (\$121,439)	Total Funds (\$163,445)
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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 4, 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, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail (e-mail) on June 20, 2017.

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.

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/ Cary B. Lund
Cary B. Lund, Attorney
Rule Reviewer

/s/ Mary E. Dalton acting for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State June 26, 2017.