

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 24.29.1401A definitions,)
24.29.1433 facility service rules and)
rates, 24.29.1534 professional fee)
schedule for services provided,)
24.29.1538 conversion factors for)
services provided, and 24.29.1591)
utilization and treatment guidelines)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 19, 2014, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the Department of Public Health and Human Services (DPHHS) Building, 111 North Sanders Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 9, 2014, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

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

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

(1) through (5) remain the same.

(6) "CCR," formerly known as "RCC," means the cost-to-charge ratio computed by using the hospital's Medicare cost report and charges.

(6) through (33) remain the same, but are renumbered (7) through (34).

~~(34) "Ratio of cost to charges (RCC)" means the computed ratio using charges and the hospital's Medicare cost report.~~

(35) and (36) remain the same.

(37) "Resource-Based Relative Value Scale" or "RBRVS" means the publication titled "Essential RBRVS", published by ~~Ingenix~~ OptumInsight, Inc.

(38) through (42) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-704, MCA

REASON: The department determines that the replacement of the acronym "RCC" with the acronym "CCR," which is the terminology used by the Centers for Medicare and Medicaid (CMS), will prevent confusion for insurers.

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013

(1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the following elements, which apply, unless a special code or description is otherwise provided by rule:

(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule, based on:

(i) CMS version 30 for dates of discharge from July 1, 2013 to September 30, 2013;

(ii) CMS version 31 for dates of discharge from October 1, 2013, through September 30, 2014; and

(iii) Pursuant to 39-71-704, MCA, the MS-DRG in effect on October 1 of each year are to be applied to a medical service for billing and reimbursement purposes;

(b) through (e) remain the same.

(g) The Montana unique code, MT003, described in (11)(e) and (12)(f); and

(h) The base rates and conversion formulas established by the department;

and:

(i) ~~The publication, "Montana Workers' Compensation Facility Fee Schedule Instruction Set for Services Provided on or after July 1, 2013," incorporated by reference.~~ for services provided from July 1, 2013 through June 30, 2014; and

(ii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014".

(2) remains the same.

(3) Critical access hospitals (CAH) are reimbursed at 100 percent of that facility's usual and customary charges. CAH is a designation for a facility only. The reimbursement rate for CAH set by this rule ~~does not include or apply to professional services provided at a CAH. Such professional services must be reimbursed pursuant to ARM 24.29.1534, whether the professional is a CAH employee or is independent~~ applies to facility charges.

(i) Regarding professional services provided at a CAH, PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed 100 percent of usual and customary. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(ii) All other professional services provided at a CAH must be billed on a CMS 1500 and reimbursed according to the professional fee schedule pursuant to ARM 24.29.1534.

(4) through (8) remain the same.

(9) Medical provider services furnished in a an acute care hospital, CAH, ASC, or other facility setting, whether those professional services are furnished as an employee of the facility or as an independent professional, must be billed separately using the CMS 1500 and must be reimbursed using the professional fee schedule pursuant to ARM 24.29.1534, except as provided in (i). These reimbursements are excluded from any calculation of outlier payments.

(i) PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed according to the facility fee schedule. These reimbursements are excluded from any calculation of outlier payments. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(10) through (11)(a) remain the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective July 1, 2013 through June 30, 2014, the base rate is \$7,944.; and

(ii) Effective July 1, 2014, the base rate is \$7,984.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$3,972~~ \$3,992, which is the base rate of ~~\$7,944~~ \$7,984 multiplied by 0.5.

(c) through (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The annual department-set may establish the base rate for outpatient service at acute care hospitals annually. is:

(i) The base rate for hospital outpatient services is \$107 from July 1, 2013 through June 30, 2014; and-

(ii) \$109 on or after July 1, 2014.

(b) The annual department-set may establish the base rate for ASCs, which is 75 percent of the hospital outpatient base rate, is: annually.

(i) The base rate for ASCs is \$80 from July 1, 2013 through June, 30, 2014, which is 75 percent of the hospital outpatient base rate.; and

(ii) \$82 on or after July 1, 2014, which is 75 percent of the hospital outpatient base rate.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: By this proposed rule, the department updates the facility fee schedule and incorporates the 2014 Facility Fee Instruction Set by reference. Workers' compensation insurers are required to use the most current version of forms from the Centers for Medicare and Medicaid (CMS). The proposed rule amendment clarifies that payments for PT, OT, and ST services, when provided on an outpatient basis by a critical access or acute care hospital, must be billed on the UB04 form. The department determines it is necessary to update the hospital inpatient and

outpatient base rates to align with the average market basket analysis completed by Medicare to increase the base rate for 2014.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) remains the same.

(a) through (c) remain the same.

(d) the instruction set for the fee schedule as adopted in this subsection called the "~~Montana Workers' Compensation Professional Fee Schedule Instruction Set for Services Provided on or after July 1, 2013~~". All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions set affecting the determination of individual fees apply. A copy of the instruction set may also be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011;

(i) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set for 2013" applies to services provided from July 1, 2013 through June 30, 2014; and

(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services on or after July 1, 2014.

(e) through (4) remain the same.

(5) Professionals, including those who furnish services in a hospital, CAH, ASC, or other facility setting must bill insurers using the CMS 1500, with the exception of PT, OT, and ST services provided on an outpatient basis and billed on a UB04.

(6) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: By this proposed rule, the department updates the fee schedule for professional services, updates the 2014 Professional Fee Schedule Instruction Set adopted by reference, incorporates clarifications made by the department within the last year, and clarifies billing for OT, PT, and ST.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008--METHODOLOGY (1) remains the same.

(2) The conversion factors ~~are established annually~~ by the department pursuant to ~~39-71-704, MCA. If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in~~ (5), ~~the most current factor listed below applies. The conversion factor for goods and services, other than anesthesia services, is are:~~

(a) ~~provided \$63.45 from January 1, 2008, to through December 31, 2008, is \$63.45;~~

(b) ~~provided \$65.28 from July January 1, 2009, to through June 30, 2013, is \$65.28; and~~

(c) ~~provided \$60.52 from on or after July 1, 2013 to through June 30, 2014, is \$60.52; and~~

(d) \$59.72 on or after July 1, 2014.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. ~~If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in (5), the most current factor listed below applies. The conversion factor for anesthesia services are:~~

~~(a) provided \$57.20 from January 1, 2008, through December 31, 2008, is \$57.20;~~

~~(b) provided \$61.98 from January 31, 2009, to through December 31, 2009, is \$61.98;~~

~~(c) provided \$60.97 from January 1, 2010, to through June 30, 2013, is \$60.97; and~~

~~(d) provided on or after \$61.40 from July 1, 2013 to through June 30, 2014, is \$61.40; and~~

~~(e) \$62.98 on or after July 1, 2014.~~

~~(4) and (5) remain the same.~~

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The department is authorized by law to update the conversion factors for general medicine and anesthesiology each year. The conversion factors are based on up to 110 percent of the average conversion factors of the top five insurers or third-party administrators, which provide group health coverage in Montana. The 2014 conversion rates represent a 1.3 percent reduction for general medicine and a 2.6 percent increase for anesthesiology. The proposed rule amendment is also necessary to correct some erroneous dates delineating the application of conversion factors during prior years.

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. ~~The utilization and treatment guidelines are titled the "Montana Utilization and Treatment Guidelines, 1st edition, 2011" (the Montana Guidelines or guidelines), are found on-line via the internet at <http://www.mtguidelines.com>, and are incorporated herein by reference. The Montana Guidelines adopted by reference in (1) may be obtained from the Montana Department of Labor and Industry. The applicable utilization and treatment guidelines are available electronically at the web site: <http://www.mtguidelines.com>; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011. The Montana Guidelines incorporated by reference apply as follows:~~

~~(a) an electronic copy is available at the web site:~~

~~<http://www.mtguidelines.com>; or for medical services provided from July 1, 2011 through June 30, 2014: "Montana Utilization and Treatment Guidelines, 1st edition, 2011"; and~~

(b) ~~a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-7732; fax (406) 444-7710; TDD (406) 444-5549.~~ for medical services provided on or after July 1, 2014: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014."

(2) through (4) remain the same.

(5) The provisions of this rule ~~and the Montana Guidelines incorporated by reference in (1)~~ apply to medical services provided on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: The department is authorized by law to review and update the Utilization and Treatment Guidelines annually. The department has followed the lead established by the Colorado Medical Treatment Guidelines, which now include updated guidelines for chronic pain, complex regional pain syndrome and traumatic brain injury. By the proposed rule amendment, the Montana Utilization and Treatment Guidelines are updated in these three areas. In addition, the nonfunctional search features for the Montana guidelines by ICD Code-9 and CPT codes are removed, and the only search capability will be by text. The proposed amendment incorporates the updated 2014 Montana guidelines by reference for services provided on or after July 1, 2014.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD at (406) 444-5549; or e-mail mlytle@mt.gov and must be received no later than 5:00 p.m., June 6, 2014.

5. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing 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 department strives 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, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. 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 or areas of law 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 Department of Labor and Industry, Attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not have a significant adverse impact on small businesses. The department has prepared a small business impact statement, which is available for review upon request.

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ JUDY BOVINGTON
Judy Bovington
Alternate Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 14, 2014.