

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1402, 24.29.1433,) PROPOSED AMENDMENT
24.29.1534, 24.29.1538, and)
24.29.1616 pertaining to medical fee)
schedules and drug formulary for)
workers' compensation purposes)

TO: All Concerned Persons

1. On June 8, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/87499059644>, Meeting ID: 87499059644, Passcode: 769232; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 87499059644, Passcode: 769232.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 June 1, 2022, to advise us of the nature of the accommodation that you need. Please contact Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail celeste.ackerman@mt.gov.

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

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) remains the same.

(a) For services provided on or after July 1, 2011, payment of medical claims must also be made in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1594 Title 24, chapter 29, subchapter 16.

(b) remains the same.

(c) A provider of medical treatment or services shall only be paid for services under this chapter if the bill for medical treatment or services is timely received by the employer or appropriate payer. Absent a showing of good cause, a bill for

treatment or services is timely received by the employer or appropriate payer when it is actually received within 365 days of the later of:

- (i) the date of service; or
- (ii) the date the provider of medical treatment or services knew the treatment or services was related to a claim for benefits under this chapter.
- (2) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: There is a reasonable necessity to amend this rule to correct a reference to a repealed rule and to adopt a deadline for the timely filing of medical bills. The timely filing rule ensures that claim reserves are appropriate and helps prevent the reopening of closed claims for the sole purpose of a delayed bill submission to the employer or appropriate payer. Furthermore, twenty-one other states have adopted timely filing rules for medical bills in the workers' compensation context.

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(b) remain the same.

- (c) The base rates and conversion formulas are established by the department:
 - (i) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set for 2013," for services provided from July 1, 2013 through June 30, 2014;~~
 - (ii) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014," for services provided from July 1, 2014, through June 30, 2015;~~
 - (iii) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2015," for services provided from July 1, 2015, through June 30, 2016;~~
 - (iv) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2016," for services provided from July 1, 2016, through June 30, 2017;~~
 - (v) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017," for services provided from July 1, 2017, through June 30, 2018;~~
 - (vi) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2018," for services provided from July 1, 2018, through June 30, 2019;~~
 - (vii) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2019," for services provided from July 1, 2019, through June 30, 2020;~~
 - (viii) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2020," for services provided from July 1, 2020, through June 30, 2021; and~~
 - (ix) ~~The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2021."~~

(d) All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. A copy of any instruction set for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(2) through (10) remain the same.

(11) and (11)(a) remain the same.

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

(ii) Effective July 1, 2014 through June 30, 2015, the base rate is \$7,984.

(iii) Effective July 1, 2015, through June 30, 2016, the base rate is \$8,076.

(iv) Effective July 1, 2016, through June 30, 2017, the base rate is \$8,120.

(v) Effective July 1, 2017, through June 30, 2018, the base rate is \$8,201.

(vi) Effective July 1, 2018, through June 30, 2019, the base rate is \$8,373.

(vii) Effective July 1, 2019, through June 30, 2020, the base rate is \$8,599.

(viii) Effective July 1, 2020, through June 30, 2021, the base rate is \$8,909.

(ix) Effective July 1, 2021, the base rate is \$9,435.

(i) The base rate effective July 1, 2022, is \$9,435.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(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 \$4,717.50, which is the base rate of \$9,435 multiplied by 0.5.

(c) through (12) remain the same.

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

(i) \$107, from July 1, 2013, through June 30, 2014;

(ii) \$109, from July 1, 2014, through June 30, 2015;

(iii) \$111, from July 1, 2015, through June 30, 2016;

(iv) \$111, from July 1, 2016, through June 30, 2017;

(v) \$114, from July 1, 2017, through June 30, 2018;

(vi) \$116, from July 1, 2018, through June 30, 2019;

(vii) \$119, from July 1, 2019, through June 30, 2020;

(viii) \$123, from July 1, 2020, through June 30, 2021; and

(ix) \$130, on or after July 1, 2021.

(i) The base rate effective July 1, 2022, is \$130.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

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

(i) \$80, from July 1, 2013, through June, 30, 2014;

- (ii) ~~\$82, from July 1, 2014, through June 30, 2015;~~
- (iii) ~~\$83, from July 1, 2015, through June 30, 2016;~~
- (iv) ~~\$83, from July 1, 2016, through June 30, 2017;~~
- (v) ~~\$86, from July 1, 2017, through June 30, 2018;~~
- (vi) ~~\$87, from July 1, 2018, through June 30, 2019;~~
- (vii) ~~\$89, from July 1, 2019, through June 30, 2020;~~
- (viii) ~~\$92, from July 1, 2020, through June 30, 2021; and~~
- (ix) ~~\$98, on or after July 1, 2021.~~

(i) The base rate effective July 1, 2022, is \$98.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website. A copy of the base rates for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1433 to incorporate the annually updated medical fee schedules and related materials to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical rates and instruction sets can be accessed online and by contacting the department. The amendments also removed references to annually updated instruction sets which allows the department to update instruction sets as needed rather than only updating the instruction sets annually with the rates.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013. An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. 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. All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website. A copy of the instruction sets for services provided starting July 1, 2013, through the present may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) ~~the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instruction set affecting the determination of individual~~

~~fees apply. Copies of the current fee schedule and the instruction set may be obtained on the Employment Relations Division website;~~

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

~~(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services provided from July 1, 2014 through June 30, 2015;~~

~~(iii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2015" applies to services provided from July 1, 2015, through June 30, 2016;~~

~~(iv) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2016" applies to services provided from July 1, 2016, through June 30, 2017;~~

~~(v) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017" applies to services provided from July 1, 2017, through June 30, 2018;~~

~~(vi) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2018" applies to services provided from July 1, 2018, through June 30, 2019;~~

~~(vii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2019" applies to services provided from July 1, 2019, through June 30, 2020;~~

~~(viii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2020" applies to services provided from July 1, 2020, through June 30, 2021; and~~

~~(ix) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2021" applies to services provided on or after July 1, 2021.~~

~~(b) through (f) remain the same but are renumbered (a) through (e).~~

~~(2) through (10) remain the same.~~

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1534 to incorporate the annually updated medical fee schedules and related materials to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical instruction sets can be accessed online and by contacting the department. The amendments also removed references to annually updated instruction sets which allows the department to update instruction sets as needed rather than only updating the instruction sets annually with the rates.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) and (2) remain the same.

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

- (b) ~~\$65.28 from January 1, 2009, through June 30, 2013;~~
- (c) ~~\$60.52 from July 1, 2013, through June 30, 2014;~~
- (d) ~~\$59.72 from July 1, 2014, through June 30, 2015;~~
- (e) ~~\$61.49 from July 1, 2015, through June 30, 2016;~~
- (f) ~~\$62.91 from July 1, 2016, through June 30, 2017;~~
- (g) ~~\$62.92 from July 1, 2017, through June 30, 2018;~~
- (h) ~~\$63.50 from July 1, 2018, through June 30, 2019;~~
- (i) ~~\$64.04 from July 1, 2019, through June 30, 2020;~~
- (j) ~~\$63.41 from July 1, 2020, through June 30, 2021; and~~
- (k) ~~\$61.05 on or after July 1, 2021.~~

(a) \$61.05 on or after July 1, 2022.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(3) remains the same.

- (a) ~~\$57.20 from January 1, 2008, through December 31, 2008;~~
- (b) ~~\$61.98 from January 1, 2009, through December 31, 2009;~~
- (c) ~~\$60.97 from January 1, 2010, through June 30, 2013;~~
- (d) ~~\$61.40 from July 1, 2013, through June 30, 2014;~~
- (e) ~~\$62.98 from July 1, 2014, through June 30, 2015;~~
- (f) ~~\$65.63 from July 1, 2015, through June 30, 2016;~~
- (g) ~~\$63.86 from July 1, 2016, through June 30, 2017;~~
- (h) ~~\$65.98 from July 1, 2017, through June 30, 2018;~~
- (i) ~~\$66.97 from July 1, 2018, through June 30, 2019;~~
- (j) ~~\$69.58 from July 1, 2019, through June 30, 2020;~~
- (k) ~~\$67.32 from July 1, 2020, through June 30, 2021; and~~
- (l) ~~\$64.84 on or after July 1, 2021.~~

(a) \$64.84 on or after July 1, 2022.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website. A copy of the conversion factors for services provided starting July 1, 2013, may be requested by email at DLIERDBP&S@mt.gov; phone at 406-444-6543; or by mail at P.O. Box 8011 Helena, MT 59604.

(4) and (5) remain the same.

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

REASON: There is reasonable necessity to amend ARM 24.29.1538 to incorporate the annually updated conversion factors to comply with the provisions of 39-71-704(2), MCA, that require the department to annually establish a medical fee schedule. The department simplified the rule by clarifying how the historical conversion factors sets can be accessed online and by contacting the department.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) through (2)(a) remain the same.

- (b) for prescriptions written between January 1, 2020 through December 31, 2020, the October 2019 edition of the ODG Drug Formulary;
- (c) for prescriptions written between January 1, 2021 through June 30, 2021, the October 2020 edition of the ODG Drug Formulary; **and**
- (d) for prescriptions written ~~on or after~~ between July 1, 2021 through June 30, 2022, the April 2021 edition of the ODG Drug Formulary; **and**
- (e) for prescriptions written on or after July 1, 2022, the April 2022 edition of the ODG Drug Formulary.

(3) through (5) remain the same.

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

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1616 because the department has adopted a commercial drug formulary. The drug formulary rule must be updated annually via the administrative rule amendment process in order to comply with the provisions of 39-71-704(3)(b)(i) and (ii), MCA (2021). The automatic monthly update process is expressly provided for by 2-4-307(8), MCA. Copies of the proposed 2022 ODG Drug Formulary are available and can be accessed online at: <http://erd.dli.mt.gov/work-comp-claims/medical-regulations/formulary>.

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 Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail celeste.ackerman@mt.gov, and must be received no later than 5:00 p.m., June 10, 2022.

5. 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

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

7. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

8. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor

Alternate Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 3, 2022.