

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 24.29.1433, 24.29.1534, and) PROPOSED AMENDMENT
24.29.1538 pertaining to workers')
compensation facility service rules)
and rates and conversion factors)

TO: All Concerned Persons

1. On May 5, 2017, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, 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 April 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Maralyn Lytle, 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 mlytle@mt.gov.

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

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 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 elements listed in 39-71-704, MCA, and the following:

(a) and (b) remain the same.

(c) The base rates and conversion formulas established by the department:

(i) and (ii) remain the same.

(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; ~~and~~

(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; and

(v) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017."

(2) through (5) remain the same.

(6) DME, prosthetics, and orthotics, excluding implantables, will be paid according to the professional fee schedule pursuant to ARM 24.29.1534 or, if no reimbursement value, ARM 24.29.1523.

(7) through (10) 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) through (iii) remain the same.

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

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

(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 ~~\$4,060~~ \$4,100.50, which is the base rate of ~~\$8,120~~ \$8,201 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 base rate for outpatient service at acute care hospitals is:

(i) and (ii) remain the same.

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

(iv) \$111, ~~on or after~~ from July 1, 2016, through June 30, 2017; and

(v) \$114, on or after July 1, 2017.

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

(i) and (ii) remain the same.

(iii) \$83, from July 1, 2015, through June 30, 2016; ~~and~~

(iv) \$83, ~~on or after~~ from July 1, 2016, through June 30, 2017; and

(v) \$86, on or after July 1, 2017.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1433. In addition, there is reasonable necessity to update the instruction set as part of the annual update.

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. 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 ~~instructions~~ instruction 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) and (ii) remain the same.

(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; ~~and~~

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

(v) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017" applies to services provided on or after July 1, 2017.

(b) and (c) remain the same.

(d) the Montana unique code, MT001, described in (7); ~~and~~

(e) the Montana unique code, MT003, adopted and described in ARM 24.29.1433; and

(f) the Montana unique code, MT009, for referral to a CRC for on-site job evaluation with the injured worker to assist in returning him/her to work either to his/her time of injury job or a new job/position.

(2) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1534. In addition, there is reasonable necessity to update the instruction set as part of the annual update in order to adopt a revised Professional Fee Schedule each year for the purpose of incorporating all annual changes to CPT codes, RBRVS, CCI edits, including medically unnecessary edits (MUE), conversion factors, modifiers, and Montana unique codes.

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

(2) The conversion factors established by the department for goods and services, other than anesthesia services are:

(a) through (d) remain the same.

(e) \$61.49 from July 1, 2015, through June 30, 2016; and

(f) ~~\$62.91 on or after~~ from July 1, 2016, through June 30, 2017; and

(g) \$62.92 on or after July 1, 2017.

(3) The conversion factors established by the department for anesthesia services are:

(a) through (e) remain the same.

(f) \$65.63 from July 1, 2015, through June 30, 2016; and

(g) ~~\$63.86 on or after~~ from July 1, 2016, through June 30, 2017; and

(h) \$65.98 on or after July 1, 2017.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1538.

4. Copies of the proposed 2017 publications identified as the proposed "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017" and "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017" are available and can be accessed at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

5. A printed version of the proposed 2017 publications is also available by contacting Maralyn Lytle at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

6. 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 (406) 444-5549; or e-mail mlytle@mt.gov, and must be received no later than 5:00 p.m., on May 12, 2017.

7. 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 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, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. 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.

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

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

11. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 3, 2017.