DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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Children, Families, Health and Human Services Interim Committee
PO Box 201706
Helena, MT 59620-1706
Attention: Chairman Priest

Re: DPHHS written response, pursuant to § 2-4-406 (2), MCA, to the CFHHS Interim Committee's January 23, 2012, letter, objecting to MAR Notice 37-541.

Dear Chairman Priest and Members of the Interim Committee:

I am responding to your January 23, 2012, letter regarding the amendments to ARM 37.85.212 that were published in MAR Notice 37-541. The Children, Families, Health and Human Services Interim Committee objects to ARM 37.85.212, contending the rule does not comply with the language of § 53-6-125 (2). You state that:

> because some of the specific reimbursement rates, which is the amount of money paid to physician for providing specific services to Medicaid recipients, do dip below the 2010 level, the DPHHS's adoption of MAR Notice 37-541 is in conflict with 53-6-125, MCA. (January 23, 2012, letter page 2)

I respectfully disagree with the Interim Committee's opinion that § 53-6-125 (2), MCA, requires the Department to review and adjust the fee for each procedure or that ARM 37.85.212 conflicts with § 53-6-125, MCA. I agree with your statements at page 2 of your letter, regarding the rules of statutory construction -- statutes are construed according to their plain meaning therefore, if the language is clear and unambiguous, no further interpretation is required.

The statutory language of § 53-6-125 clear and unambiguously distinguishes between a fee for a covered service and a fiscal year reimbursement rate:

> (1) The ***fee*** for a covered service provided by a physician under the medicaid program is determined by multiplying the conversion factor times the relative value unit for that service times any applicable policy adjusters. (Emphasis added)
>
> (2)(a) For state fiscal years 2011 through 2013, the conversion factor is $40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 ***reimbursement rate***. (Emphasis added)

Section 53-6-125 does not require that that every fee must be maintained, at a minimum, at the fiscal year 2010 fee. The plain language of statute requires the department to "maintain reimbursement, at a minimum, at the fiscal year 2010 *reimbursement rate*." The Department has maintained reimbursement at the fiscal year 2010 reimbursement rate with the RBRVS reimbursement rate method adopted according to ARM 37.85.212.

In 2007 the Legislature defined the reimbursement rate method for physicians by reference to the federal Medicare RBRVS. "Resource-based relative value scale" means the Medicare resource-based relative value scale contained in the physician's Medicare fee schedule adopted by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services." (Section 53-6-124 (7).) The Legislature directed the Department to use the RBRVS rate methodology to calculate the rate reimbursement for physicians – it did not enact a specific fee for the tens of thousands of medical procedures that a physician may perform nor direct the Department to do so.

RBRVS is a method of generating fee schedules that in the aggregate constitute a health care plans reimbursement rate. RBRVS is not unique to Montana Medicaid. It was developed by the federal government (Centers of Medicare and Medicaid "CMS") and the American Medical Association and adopted for Medicare in 1992 (See, for example 42 USC §1395w-4 and Title 42 CFR Part 414).

The RBRVS formula for a particular fee is stated at § 53-6-125 (1):

Fee = Conversion Factor * Relative Value Unit * Policy Adjuster

Physician services are identified by current procedure codes (CPTs.) The relative value unit of a procedure in relation to all other procedures is based on three components of value — physician skill and work, practice expense, and malpractice liability insurance. The value assigned to the procedure is the "RVU."

Per § 53-6-125 (1) and the RBRVS system, a fee for a particular physician service is a function of the RVU calculated for the service as well as the Conversion Factor. The tens of thousands of RVUs that make up the RBRVS rate methodology are not static. The RVUs are revised annually and on a five year review cycle by the Centers for Medicare and Medicaid and the AMA to reflect changes in procedures and changes in the components of value. Montana adopts the federal revisions annually [See ARM 37.85.212 (1) (h)].

In conclusion, I appreciate the concerns of the Interim Committee regarding physician's reimbursement by Montana Medicaid. Like the Committee, I understand the skill and commitment of physicians and agree that they should be justly compensated according to a rate reimbursement system that is understood and consistently administered. The current version of ARM 37.85.212 became effective on August 26, 2011. Fee schedules were established as of September 1, 2011, consistent with the current language of 37.85.212 and physicians have been paid accordingly since September 1, 2011.

For all reason set forth above, I respectfully request that the Committee modify or withdraw its objection to the department's proposed amendments to ARM 37.85.212 which were published in MAR Notice 37-541.

Sincerely,

Mary E. Dalton
acting for

Anna Whiting Sorrell
Director