

**Unofficial Draft Copy**

As of: August 20, 2008 (8:18am)

LC149b

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act establishing principles for payments to entities that contract with the department of health and human services to offer community-based services; establishing a methodology for setting provider rates; requiring the department to collect and analyze rate-related information; and amending sections 53-10-201, 53-10-203, 53-10-204, 53-10-211, and 53-10-212, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Principles for provider rates.** The commission, in its role of reviewing and recommending provider rates, and the department, in its role of setting provider rates, shall use the following principles:

(1) Except as otherwise provided in law, state agencies shall treat the procurement of services provided to persons living in a community setting outside of a state institution with the same procedures used for the procurement of other government services and goods.

(2) State agencies shall clearly state the regulations and standards by which the services are governed.

(3) The department shall fund, to the extent funds are available, the cost of meeting federal, state, and local

regulations.

(4) Rates must be driven by measurable outcomes established by the agency responsible for procuring the services.

NEW SECTION. **Section 2. Methodology for reviewing and setting provider rates.** (1) The department shall establish a methodology for reviewing provider costs and rates that is:

(a) objective;

(b) predictable;

(c) developed in a scientific manner; and

(d) balanced and equitable, as evidenced by consideration of the following factors:

- (i) client access;
- (ii) quality of services;
- (iii) provider networks;
- (iv) equitable reimbursement; and
- (v) good stewardship of taxpayer resources.

(2) The department shall establish a methodology for setting reimbursement rates to be paid to providers that takes into consideration all costs of providing quality care and services, including but not limited to:

(a) the results of the data review conducted by the department as provided in 53-10-211;

(b) the relevant market rate for direct costs, such as the cost of providing care that meets a person's basic living needs, physical care, mental health care, education, and family and community integration needs; and

(c) the relevant market rate for any applicable indirect costs, which include but are not limited to:

- (i) case management costs;
- (ii) facility, property, and operational costs, including administrative overhead in the provider's business;
- (iii) capital improvements;
- (iv) licensing costs;
- (v) the costs of complying with administrative rules;
- (vi) the costs of complying with contract requirements; and
- (vii) personnel, including professional development and certification needs;

(d) the level of financial risk taken by a provider in providing services;

(e) the complexity of the provider's services; and

(f) any other matter affecting the cost of the providers' services.

(3) The commission shall use the methodology principles established in subsection (2) when reviewing existing reimbursement rates and recommending new or altered reimbursement rates for providers.

(4) The commission, in reviewing and recommending reimbursement rate decisions, and the department, in establishing reimbursement rates, shall use the common set of data developed as provided in 53-10-211.

**Section 3.** Section 53-10-201, MCA, is amended to read:

**"53-10-201. Legislative findings, purpose, and intent.** (1)

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The legislature finds that services provided by the department to persons who are living in a community setting outside of state institutions and who are persons with developmental disabilities, are mentally ill, or are elderly or very young are essential services and the essential nature of the services is not diminished because the services are provided by contracts. Because the services provided by contracts are many and are important to the well-being of Montana residents who can least care for themselves, the legislature finds that it is necessary to establish a system under which provider services, the costs of providers, and the reimbursement rates paid to providers are analyzed and monitored on a regular basis to ensure that state funding is appropriately expended, that consumers' and taxpayers' expectations are attended to, and that the providers of the services are treated fairly.

(2) The purpose of this part is to provide a regular, predictable, and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department. The legislature does, however, retain its constitutional duty to enact or amend law concerning contracted services, make appropriations for contracted services through funding of department programs, and review department contracted service programs through the mechanism provided in this part. This part is not intended to restrict the legislature in making its appropriate policy and fiscal judgments concerning the value of department programs or services.

(3) It is the intent of the legislature that the department

shall conduct a periodic, comprehensive analysis of both existing rates and the factors relevant to provider rates, pursuant to 53-10-211.

~~(3)~~(4) It is the intent of the legislature that to the greatest extent practicable, the commission should:

(a) establish an open and defensible process for conducting its work;

(b) create a set methodology or protocol, in accordance with [section 2], through which provider reimbursement rates can be recommended for a service, service level, or population of service consumers served by a provider and the department;

(c) recommend a list of reimbursable expenses for every service and service level based upon the expenses necessary to provide that service or service level and comply with the licensure, contracts, and administrative rules that govern that service or service level;

(d) recommend rate equity among service levels within a group of services and between different groups of services; and

(e) recommend the best and most cost-effective method of regulating and auditing provider services."

{Internal References to 53-10-201: None.}

**Section 4.** Section 53-10-203, MCA, is amended to read:

**"53-10-203. Commission on provider rates and services.** (1)  
The department shall form an advisory commission to be known as the commission on provider rates and services to provide information to the department concerning provider services,

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costs, and reimbursement rates. The commission membership must include a maximum of 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

(a) at least three providers;

(b) at least three of a combination of consumers of provider services and family members of consumers;

(c) two employees of the department;

~~(d) one representative from the legislative fiscal division;~~

~~(e)~~(d) one representative from the governor's office on budget and program planning;

~~(f)~~(e) subject to 5-5-234, one member of the majority party and one member of the minority party of the house of representatives; and

~~(g)~~(f) subject to 5-5-234, one member of the majority party and one member of the minority party of the senate.

(2) A representative of the legislative fiscal division must be provided with all materials provided to the commission and must be offered an opportunity to comment on matters before the commission.

~~(2)~~(3) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

~~(3)~~(4) Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two

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terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

~~(4)~~(5) The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

~~(5)~~(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121."

{*Internal References to 53-10-203:*  
*53-10-202* }

**Section 5.** Section 53-10-204, MCA, is amended to read:

**"53-10-204. Duties of commission on provider rates and services.** (1) The commission shall conduct an ongoing review of provider services, costs, and reimbursement rates. The review must be made without regard to the source of funds for reimbursement payments.

(2) The commission shall consult with the director concerning provider services, costs, and reimbursement rates subject to its review but shall make independent determinations of those matters within its authority. The commission shall establish a consistent and impartial process for determining the order in which provider services, costs, and reimbursement rates

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will be reviewed by the commission ~~and the methodology that the commission will use in its review.~~

~~(3)~~(4) The commission shall take into account the work of other advisory groups or councils working with the department on subjects concerning its authority and make recommendations to the director and appropriate members of those groups or councils concerning the subject and timing of the work of those groups or councils that will assist the commission and those groups or councils to exercise their legal or other authority and achieve their purpose.

~~(4)~~(5) In conducting its review, the commission shall also consider:

- (a) the need for the department to limit expenditures to appropriations;
- (b) existing and future contracts with the department;
- (c) state and federal laws, rules, and regulations; and
- (d) the intention of the legislature to live within available revenue.

~~(5) In reviewing existing reimbursement rates and recommending new or altered reimbursement rates to be paid to providers, the commission shall consider the following factors:~~

- ~~(a) the level of financial risk taken by a provider in providing services;~~
  - ~~(b) the complexity of the provider's services;~~
  - ~~(c) the capital investment made by the provider;~~
  - ~~(d) the administrative overhead in the provider's business;~~
- and



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~~(e) any other matter affecting the cost of the provider's services."~~

{Internal References to 53-10-204: None.}

**Section 6.** Section 53-10-211, MCA, is amended to read:

**"53-10-211. Department to assist and cooperate with commission on provider rates and services -- records privacy -- data collection and analysis required.** (1) The department shall provide to the commission the maximum assistance that may practicably be made available to the commission and shall provide the commission with the necessary equipment, records, and other material that are both necessary and helpful for the commission to achieve the purposes of this part, including records and other material concerning past, current, and potential provider services, costs, and reimbursement. In providing and considering those records and materials, the department and the commission shall make whatever changes in provider or consumer information that are necessary to comply with lawful requirements for the privacy of the service providers and consumers.

(2) At least every four years, the department shall develop a common set of data from all providers and populations served in a community setting outside of a state institution by:

(a) requiring all providers to submit audited data on the actual cost of providing the service;

(b) analyzing and comparing all data available on the actual cost of providing each type of service;

(c) collecting, analyzing, and comparing the rates paid by

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private purchasers of services that are the same as or similar to those paid by federal, state, or special revenue funds;

(d) conducting cost-of-care analyses for all service types;

(e) collecting and analyzing information on the percentage of total provider revenue that is derived from state, federal, or special revenue funds;

(f) collecting information related to access to and trends in care; and

(g) assessing the impacts of changes in reimbursement on the use of services and the quality of care.

(3) The department shall report the information and analysis required in subsection (2) to the commission and the legislature by July 1, 2010, and every four years following that date.

(5) As part of the data review process, the department shall establish a process with providers for accountability, performance, and communication purposes."

{Internal References to 53-10-211: None.}

**Section 7.** Section 53-10-212, MCA, is amended to read:

**"53-10-212. Commission findings, recommendations, and reports.** The commission shall:

(1) make recommendations and reports concerning its activities and the results of its review to the director at those times as the commission determines; ~~and~~

(2) make findings and recommendations and prepare a report to the legislature, in the manner provided in 5-11-210, on the subjects of its review; and

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(3) report its findings and recommendations to the children, families, health, and human services interim committee each interim."

{Internal References to 53-10-212: None.}

## NEW SECTION. **Section 8. {standard} Codification**

**instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 10, part 2, and the provisions of Title 53, chapter 10, apply to [section 2].

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