

1 SENATE BILL NO. 476

2 INTRODUCED BY B. KEENAN, BISHOP, CHRISTIAENS, E. CLARK, GLASER, GRIMES, LAWSON,
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4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REQUIREMENTS FOR CERTIFICATION OF
6 LONG-TERM CARE FACILITIES THAT PROVIDE INTERMEDIATE AND SKILLED NURSING CARE;
7 REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES TO
8 DEFINE TERMS, AN INFORMAL DISPUTE RESOLUTION PROCESS, AND STANDARDS FOR QUESTIONING
9 A PHYSICIAN'S ORDERS FOR DRUGS OR TREATMENTS; AND AMENDING SECTIONS 53-6-107 AND
10 53-6-108, MCA."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 53-6-107, MCA, is amended to read:

15 **"53-6-107. Sanctions -- penalties.** (1) The department of ~~public health and human services~~ may
16 suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the
17 requirements for certification for or participation in the Montana medicaid program under 53-6-106 through
18 53-6-108 or other applicable law. The department may also impose sanctions in the form of denial of
19 medicaid payments for new admissions or other penalties or sanctions, as described in 53-6-111 or Title
20 XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and any implementing
21 federal regulations ~~and policies~~.

22 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% a year,
23 for each day that a facility is substantially out of compliance with standards or participation requirements
24 provided by applicable state or federal laws, regulations, or rules, ~~or policies~~, including but not limited to
25 standards adopted by the department under the authority of Title 50, chapter 5, or 53-6-106 through
26 53-6-108. Penalties must be collected by the department and may be applied to the protection of the
27 health and property of residents of health care facilities that the department finds deficient, including but
28 not limited to payment for the costs of relocation of residents to other facilities, operation of a facility
29 pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

30 (3) The department may appoint temporary management personnel to oversee the operation of

1 the facility and to ensure the health and safety of the facility's residents if there is a need for temporary
2 management because:

3 (a) an orderly closure of the facility is necessary; or

4 (b) improvements are being made to bring the facility into compliance with applicable standards.

5 (4) The department shall, in the case of an emergency, close the facility or transfer residents in
6 the facility to other facilities, or both."

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8 **Section 2.** Section 53-6-108, MCA, is amended to read:

9 **"53-6-108. Rules governing sanctions or remedies.** The department of public health and human
10 services shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the
11 amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed
12 for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil
13 penalty for violation of the applicable standards imposed by state or federal laws, regulations, or rules; ~~or~~
14 policies may not exceed \$10,000 for each day that the deficiency remains uncorrected. A health care
15 facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part
16 6."

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18 NEW SECTION. **Section 3. Consistent regulation of long-term care facilities -- rulemaking**
19 **authority.** In order to provide more consistent regulation of long-term care facilities that provide
20 intermediate and skilled nursing care statewide, the department shall adopt rules in consultation with
21 long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate
22 consumer groups by July 1, ~~2002~~ 2003, that:

23 (1) define the following terms used in the survey and certification process for long-term care
24 facilities that provide intermediate and skilled nursing care:

25 (a) actual harm;

26 (b) potential for more than minimal harm;

27 (c) avoidable;

28 (d) unavoidable; and

29 (e) immediate jeopardy;

30 (2) define an informal dispute resolution process to provide nursing homes with an opportunity

1 to respond to survey findings and deficiency citations that are believed to be made in error. The rules must
2 be consistent with the purpose of informal dispute resolution that is intended to give the provider an
3 opportunity to demonstrate that a deficiency has been applied in error or is a misjudgment of true facts.
4 The objective of the process is to avoid the imposition of unnecessary sanctions and to diminish the need
5 for formal administrative hearings with the state, as provided for in 53-6-108, or the federal government
6 agencies that are responsible for the enforcement of remedies. The process must provide for an objective
7 review of the raised issues by an individual who is independent of the survey process and who can
8 evaluate the legal sufficiency of the findings of the surveyors.

9 (3) define standards for survey determinations in which the surveyors question the efficacy of
10 orders for drugs and treatments made by a resident's attending physician. The standards must recognize
11 that a written physician's order provides evidence of medical necessity and the appropriateness of the
12 drugs and treatments ordered, unless the survey agency alleges substandard practice by the physician.
13 The standards must provide for the reporting of any substandard practice of a physician to the board of
14 medical examiners by the surveyors. The standards must outline a facility's responsibilities in monitoring
15 drugs and treatments ordered for residents and for consulting with the attending physician as appropriate.

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17 NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an
18 integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to
19 [section 3].

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