

## 1 HOUSE BILL NO. 108

2 INTRODUCED BY J. SESSO

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR BENEFIT COORDINATION AND SUBROGATION  
6 FOR THE STATE EMPLOYEE GROUP BENEFITS PLANS AND MONTANA UNIVERSITY SYSTEM EMPLOYEE  
7 GROUP BENEFITS PLANS; REPEALING SECTIONS 2-18-901 AND 2-18-902, MCA; AND PROVIDING AN  
8 IMMEDIATE EFFECTIVE DATE."

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10 WHEREAS, the state employee group benefits plans and Montana university system employee group  
11 benefits plans were created by the Legislature to provide state employees and Montana University System  
12 employees with adequate hospitalization, health, medical, disability, life, and other related group benefits in an  
13 efficient manner and at an affordable cost; and

14 WHEREAS, the efficient provision of group benefits at an affordable cost is enabled by the coordination  
15 of group benefits among various payers to avoid duplication of payments for medical expenses; and

16 WHEREAS, benefit coordination ensures that the cost of coverage of group benefits remains affordable  
17 for the state and its employees; and

18 WHEREAS, it is important to clarify that the state employee group benefits plans and the Montana  
19 University System employee group benefits plans may coordinate benefits with other health plans, insurers, and  
20 third parties and that benefit coordination is not subrogation.

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

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24 NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

25 (1) "Coordinate benefits" means the process of determining the medical benefit obligations of a plan so  
26 that the combined medical benefits available to a plan participant from all payment sources do not exceed the  
27 total allowable medical benefits under the terms of a plan.

28 (2) (a) "Health care insurer" means a disability insurer, an automobile medical payment insurer, a health  
29 service corporation, a health maintenance organization, a fraternal benefit society, a workers' compensation  
30 insurer, or other insurer that provides coverage for medical benefits.

1 (b) The term does not include a plan.

2 (3) "Health care provider" has the meaning provided in 50-16-504.

3 (4) "Medical benefit" or "benefit" means coverage or payment that has been or may be paid for any part  
4 of the cost of a medication or a medical service, supply, appliance, article, or other expense necessary to treat  
5 a medical condition.

6 (5) "Plan" means either the state employee group benefits plans authorized in Title 2, chapter 18, part  
7 8, or the Montana university system employee group benefits plans authorized in Title 20, chapter 25, part 13.

8 (6) "Plan participant" or "participant" means an employee, retiree, or dependent of an employee or retiree  
9 enrolled in a plan.

10 (7) "Third party" means an individual, sole proprietorship, partnership, corporation, or other business or  
11 governmental entity other than a plan, health care insurer, or health care provider, whether or not a party to a civil  
12 action for damages concerning a plan participant.

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14 **NEW SECTION. Section 2. Coordination of benefits -- information to be provided -- presumption.**

15 (1) A plan may coordinate medical benefits as provided in this section.

16 (2) A plan is not responsible for a medical benefit that:

17 (a) has been paid to a participant or participant's health care provider by a health care insurer or third  
18 party; or

19 (b) has been acknowledged, accepted, or confirmed by:

20 (i) a participant's health care insurer;

21 (ii) a third party liable to a participant for a medical benefit; or

22 (iii) a health care insurer of a third party liable to the participant for a medical benefit.

23 (3) A participant, health care insurer, or third party who is or may be liable for a medical benefit for the  
24 participant shall upon request provide a plan with the following information, including any requested details:

25 (a) whether a medical benefit is or may be available to the plan participant by the health care insurer or  
26 third party;

27 (b) the particular medical benefit that is or may be available;

28 (c) the identity of any health care provider to whom a medical benefit has been or may be given; and

29 (d) any other information reasonably necessary for the plan to coordinate medical benefits.

30 (4) If a health care insurer or third party who is or may be liable to the participant for a medical benefit

1 has made a medical benefit available to a participant, a rebuttable presumption exists that the health care insurer  
 2 or third party is primarily responsible for the medical benefit. If the plan, health care insurer, or third party do not  
 3 agree as to which among them is primarily responsible for providing a medical benefit, then [section 3] applies.

4 (5) A plan is responsible for only those medical benefits available to a participant under the terms of the  
 5 plan.

6 (6) Except as provided in subsection (4), the provisions of [section 3] do not apply to this section.  
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8 **NEW SECTION. Section 3. Plan subrogation rights -- notice -- waiver.** (1) To the extent necessary  
 9 for reimbursement for a medical benefit granted to a plan participant or participant's health care provider by a  
 10 plan:

11 (a) the plan is subrogated to the rights of the participant to the value of a claim, action, or judgment that  
 12 was paid by the plan to the plan participant or the participant's health care provider. However, the plan may not  
 13 enforce the right until the participant is fully compensated for the participant's medical expenses.

14 (b) a health care insurer or third party that is primarily liable for a medical benefit shall pay the value of  
 15 the benefit to the plan and the plan may recover from any health care insurer or third party who is or may be liable  
 16 for a medical benefit for a plan participant the value of the medical benefit paid to a participant or a participant's  
 17 health care provider.

18 (2) If a plan participant intends to bring an action for damages against a third party that would include  
 19 a claim for payment of medical expenses paid or payable under the plan, the participant shall provide reasonable  
 20 notice of that intent to the plan.

21 (3) A participant may request that the plan pay a share of the reasonable expenses, including costs and  
 22 attorney fees, of a legal action that includes a claim for payment of medical benefits. If the plan declines to pay  
 23 the share, the plan waives 50% of any amount to which the plan would otherwise be entitled under subsection  
 24 (1)(a).

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 26 **NEW SECTION. Section 4. Repealer.** The following sections of the Montana Code Annotated are  
 27 repealed:

28 2-18-901. Subrogation rights.

29 2-18-902. Notice -- shared costs of third-party action -- limitation.  
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