



AN ACT GENERALLY REVISING RULEMAKING PROCEDURES; REQUIRING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INCLUDE CERTAIN INFORMATION IN RULEMAKING NOTICES PERTAINING TO THE DELIVERY OF MEDICAID SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PREPARE AND ELECTRONICALLY SEND A STATEMENT OF FINDINGS TO INTERESTED PERSONS CONCERNING THE RULE'S INTENDED OUTCOMES WITHIN A YEAR AFTER THE RULE'S EFFECTIVE DATE IF THE RULE PERTAINS TO THE DELIVERY OF MEDICAID SERVICES; PROVIDING EXCEPTIONS; AMENDING PAYMENTS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS ENTITLED TO COLLECT FROM CERTAIN PROVIDERS; AMENDING SECTION 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Performance-based rulemaking -- privacy exemption. (1) Except for rules implementing rate increases or implementing federal law or regulation, the notice of a proposed rule concerning the delivery of medicaid services by the department of public health and human services must include, in addition to the other requirements under this chapter:

(a) a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if such an assessment can be made, the method the department of public health and human services will use to measure whether or not the principal reasons and the rationale for the intended action of the rule, as provided by 2-4-305(6)(b), are successfully achieved, including any data collection methods or metrics if applicable; and

(b) the period over which the intended outcomes will be measured, including any measurement intervals, if applicable.

(2) (a) No later than 1 year after the effective date of the rule subject to subsection (1), the department of public health and human services shall prepare a concise statement of findings evaluating whether, using the data collection or metric identified in the rule proposal, the data collected after the rule's effective date indicated

that the rule successfully achieved its intended outcomes. The department of public health and human services shall post the statement of findings on its website.

(b) The department of public health and human services is not under an obligation to report on any other variables that may have impacted the results of the data collection methods or metrics.

(3) The department of public health and human services is exempted from the reporting requirements of subsection (2)(a) to the extent that the requirements would require the publication of confidential information.

(4) The department of public health and human services may only use existing resources to fulfill the mandates of this section.

Section 2. Section 53-6-111, MCA, is amended to read:

"53-6-111. Department charged with administration and supervision of medical assistance program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules.

(1) The department of public health and human services may administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in Title 53, chapter 2, and this chapter and that is in compliance with Title XIX of the Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

(i) the amount of a payment under this part to which the provider was not entitled, ~~regardless of whether the incorrect payment was the result of department or provider error or other cause~~ if the incorrect payment was the result of the provider's error or if the provider's interpretation of the pertinent rule or billing code is not reasonable; and

(ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the department for the rate period.

(b) If the decision regarding the amount of a payment to which the provider was not entitled depends on an interpretation of a pertinent rule or billing code, the provider has the burden of proving that its interpretation is reasonable and consistent with:

(i) the information given to providers in any applicable Montana medicaid provider rules or manual, including but not limited to the Coding Resources identified in or incorporated by reference in any applicable Montana medicaid provider rule or manual; and

(ii) any written interpretations by the department that were in existence at the time payment was made to the provider.

~~(b)~~(c) In addition to the amount of overpayment recoverable under subsection (2)(a), the department is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30 days after the date of mailing of notice of the overpayment by the department to the provider, except that interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

~~(e)~~(d) The department may collect any amount described in subsection (2)(a) by:

- (i) withholding current payments to offset the amount due;
- (ii) applying methods and using a schedule mutually agreeable to the department and the provider; or
- (iii) any other legal means.

~~(d)~~(e) The department may suspend payments to a provider for disputed items pending resolution of a dispute.

~~(e)~~(f) The fact that a provider may have ceased providing services or items under the medical assistance program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse repayment under this subsection (2).

(3) The department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraud and abuse. Subject to the definitions in 53-6-155, the department rules must include but are not limited to specifications regarding the activities and conduct that constitute fraud and abuse.

(4) Subject to subsections (5) and (6), the sanctions imposed under rules adopted by the department under subsection (3) may include but are not limited to:

- (a) required courses of education in the rules governing the medicaid program;
- (b) suspension of participation in the program for a specified period of time;
- (c) permanent termination of participation in the medical assistance program; and
- (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

(5) In all cases in which the department may recover medicaid payments or impose a sanction, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment.

(6) The remedies provided by this section are separate and cumulative to any other administrative, civil,

or criminal remedies available under state or federal law, regulation, rule, or policy."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2015.

Section 5. Applicability. [Section 1] applies to rule notices published by the department of public health and human services on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0336, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2015.

Speaker of the House

Signed this _____ day
of _____, 2015.

SENATE BILL NO. 336

INTRODUCED BY B. KEENAN

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