

HOUSE BILL NO. 256

INTRODUCED BY M. MONFORTON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LEGISLATIVE APPROVAL TO EXPAND MEDICAID
5 OR ESTABLISH A HEALTH INSURANCE EXCHANGE AS ALLOWED UNDER THE PATIENT PROTECTION
6 AND AFFORDABLE CARE ACT; AMENDING SECTIONS 33-1-311, 33-1-409, AND 53-6-101, MCA; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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9 WHEREAS, the president signed the Patient Protection and Affordable Care Act, enacted by Congress
10 as Public Law 111-148, and its companion bill, Public Law 111-152, into law in March 2010; and

11 ~~WHEREAS, the president stated, falsely, that the laws would allow people to keep their current health~~
12 ~~insurance plans if they wanted to do so; and~~

13 ~~WHEREAS, the Patient Protection and Affordable Care Act requires individuals to have health insurance~~
14 ~~coverage or pay a tax penalty; and~~

15 ~~WHEREAS, in November 2012, 67 percent of Montanans approved Legislative Referendum No. 122 to~~
16 ~~enact the Montana Health Care Freedom Act, which prohibits the imposition of "a penalty, tax, fee, or fine of any~~
17 ~~type if a person or entity declines to purchase health insurance coverage"; and~~

18 ~~WHEREAS, in passing the Patient Protection and Affordable Care Act, some members of Congress~~
19 ~~indicated that they relied on the work of a consultant who was paid \$400,000 by the federal government and who~~
20 ~~has since said that a "lack of transparency" and the "stupidity of the American voter" were essential for enacting~~
21 ~~the laws; and~~

22 ~~WHEREAS, governors in some states have authorized the expansion of the Medicaid program as allowed~~
23 ~~under Public Law 111-148 and Public Law 111-152 without authorization of their state legislatures; and~~

24 ~~WHEREAS, some states have spent millions of dollars to establish the American health benefit~~
25 ~~exchanges authorized under Public Law 111-148 without successfully developing online systems that were able~~
26 ~~to enroll individuals in health insurance plans.~~

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

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30 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Checks and

1 Balances on Federal Health Care Laws Act".

2

3 **NEW SECTION. Section 2. Legislative findings -- purpose.** (1) The legislature finds that Montanans
4 believe transparency should exist in governmental decision-making related to the Patient Protection and
5 Affordable Care Act, enacted as Public Law 111-148, and its companion bill, Public Law 111-152.

6 (2) The legislature further finds that Montanans believe that:

7 (a) they should have a voice in such decision-making through their elected representatives in the
8 Montana legislature; and

9 (b) checks and balances should apply to decisions concerning the state's participation in Public Law
10 111-148, Public Law 111-152, and related federal regulations carrying out those laws, including decisions related
11 to:

12 (i) Montana's participation in the expansion of the medicaid program to cover nondisabled, nonpregnant,
13 nonelderly adults; and

14 (ii) the establishment of an American health benefit exchange as defined in the Patient Protection and
15 Affordable Care Act as enacted on March 23, 2010.

16 (3) It is the purpose of [sections 1 through 3] to ensure that decisions related to the Patient Protection
17 and Affordable Care Act are carefully considered within the context of the state's responsibility to fund other state
18 services, including education, infrastructure, and public safety services.

19

20 **NEW SECTION. Section 3. State actions related to federal health care and health insurance laws.**

21 A state agency may not take any of the following actions without statutory authorization:

22 (1) establish an American health benefit exchange as allowed under 42 U.S.C. 18031, either as a
23 state-operated exchange or a state partnership exchange operated in conjunction with the federal government;
24 or

25 (2) expand medicaid services to people who meet the eligibility requirements of 42 U.S.C.
26 1396a(a)(10)(A)(i)(VIII) as enacted by Public Law 111-148, Public Law 111-152, and federal regulations
27 implementing those laws.

28

29 **Section 4.** Section 33-1-311, MCA, is amended to read:

30 **"33-1-311. General powers and duties -- limitations.** (1) The commissioner shall enforce the

1 applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the
2 laws of this state.

3 (2) The commissioner has the powers and authority expressly conferred upon the commissioner by or
4 reasonably implied from the provisions of the laws of this state.

5 (3) Except as otherwise provided in 33-39-101, the commissioner shall administer the department to
6 ensure that the interests of insurance consumers are protected.

7 (4) The commissioner may conduct examinations and investigations of insurance matters, in addition
8 to examinations and investigations expressly authorized, as the commissioner considers proper, to determine
9 whether any person has violated any provision of the laws of this state or to secure information useful in the lawful
10 administration of any provision. The cost of additional examinations and investigations must be borne by the state.

11 (5) The commissioner may not take the following actions unless the legislature has authorized the action
12 as provided in [section 3]:

13 (a) establish, operate, or contract for establishment of an American health benefit exchange as allowed
14 under 42 U.S.C. 18031; or

15 (b) enter into an agreement with the federal government to operate as a state partnership exchange in
16 accordance with guidance issued by the U.S. department of health and human services.

17 ~~(5)~~(6) The commissioner shall maintain as confidential any information or document received from:

18 (a) the national association of insurance commissioners; or

19 (b) another state agency, an insurance department from another state, a federal agency, the interstate
20 insurance product regulation commission, or a foreign government that treats the same information or document
21 as confidential. The commissioner may provide information or documents, including information or documents
22 that are confidential, to another state agency, the national association of insurance commissioners, a state or
23 federal law enforcement agency, a federal agency, the interstate insurance product regulation commission, a
24 foreign government, or an insurance department in another state if the recipient agrees to maintain the
25 confidentiality of the information or documents.

26 ~~(6)~~(7) The department is a criminal justice agency as defined in 44-5-103."
27

28 **Section 5.** Section 33-1-409, MCA, is amended to read:

29 **"33-1-409. Examination reports -- hearings -- confidentiality -- publication.** (1) All examination
30 reports must be composed only of facts appearing upon the books, records, or other documents of the company,

1 its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other
2 persons examined concerning its affairs. The report must contain the conclusions and recommendations that the
3 examiners find reasonably warranted from the facts.

4 (2) Not later than 60 days following completion of the examination, the examiner in charge shall file with
5 the department a verified written report of examination under oath. Upon receipt of the verified report, the
6 department shall transmit the report to the company examined, together with a notice that gives the company
7 examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with
8 respect to any matters contained in the examination report.

9 (3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the
10 commissioner shall fully consider and review the report, together with any written submissions or rebuttals and
11 any relevant portions of the examiner's workpapers and enter an order:

12 (a) adopting the examination report as filed or with modification or corrections. If the examination report
13 reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the
14 commissioner may order the company to take any action the commissioner considers necessary and appropriate
15 to cure the violation.

16 (b) rejecting the examination report with directions to the examiners to reopen the examination for
17 purposes of obtaining additional data, documentation, information, or testimony and of refileing pursuant to
18 subsection (2); or

19 (c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of
20 obtaining additional data, documentation, information, and testimony.

21 (4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and
22 conclusions resulting from the commissioner's consideration and review of the examination report, relevant
23 examiner workpapers, and any written submissions or rebuttals. An order must be considered a final
24 administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon
25 the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the
26 issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under
27 oath that they have received a copy of the adopted report and related orders.

28 (b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative
29 must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution
30 of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report

1 or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or
2 rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order
3 pursuant to subsection (3)(a).

4 (ii) The commissioner may not appoint an examiner as an authorized representative to conduct the
5 hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's
6 workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The
7 commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the
8 production of documents considered relevant to the investigation, whether under the control of the department,
9 the company, or other persons. The documents produced must be included in the record, and testimony taken
10 by the commissioner or the commissioner's representative must be under oath and preserved for the record. This
11 section does not require the department to disclose any information or records that would indicate or show the
12 existence or content of an investigation or activity of a criminal justice agency.

13 (iii) The hearing must proceed with the commissioner or the commissioner's representative posing
14 questions to the persons subpoenaed. The company and the department may present testimony relevant to the
15 investigation. Cross-examination may be conducted only by the commissioner or the commissioner's
16 representative. The company and the department must be permitted to make closing statements and may be
17 represented by counsel of their choice.

18 (5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall
19 continue to hold the content of the examination report as private and confidential information for a period of 30
20 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for
21 public inspection as long as a court of competent jurisdiction has not stayed its publication.

22 (b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing
23 the content of an examination report or preliminary examination report, the results of an examination, or any
24 matter relating to a report or results to the insurance department of this state or of any other state or country, to
25 law enforcement officials of this state or of any other state, or to an agency of the federal government at any time
26 as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it in
27 a manner consistent with this part.

28 (c) If the commissioner determines that regulatory action is appropriate as a result of an examination,
29 the commissioner may initiate any proceedings or actions as provided by law.

30 (6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not

1 discoverable or admissible as evidence in any private action, and may not be made public by the commissioner
 2 or any other person except to the extent provided in 33-1-311~~(5)~~(6) and subsection (5) of this section. Persons
 3 given access to working papers shall agree in writing, prior to receiving the information, to treat the information
 4 in the manner required by this section unless prior written consent has been obtained from the company to which
 5 the working papers pertain.

6 (b) For purposes of subsection (6)(a), "working papers" means:

- 7 (i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any other
 8 person in the course of an examination or analysis by the commissioner;
 9 (ii) confidential criminal justice information, as defined in 44-5-103;
 10 (iii) personal information protected by an individual privacy interest; and
 11 (iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or disclosed
 12 to the commissioner or any other person in the course of an examination made under this part for which there
 13 are reasonable grounds of privilege that are asserted by the party claiming the privilege."
 14

15 **Section 6.** Section 53-6-101, MCA, is amended to read:

16 **"53-6-101. Montana medicaid program -- authorization of services -- limitations.** (1) There is a
 17 Montana medicaid program established for the purpose of providing necessary medical services to eligible
 18 persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program
 19 administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et
 20 seq. The department shall administer the Montana medicaid program.

21 (2) The department and the legislature shall consider the following funding principles when considering
 22 changes in medicaid policy that either increase or reduce services:

23 (a) protecting those persons who are most vulnerable and most in need, as defined by a combination
 24 of economic, social, and medical circumstances;

25 (b) giving preference to the elimination or restoration of an entire medicaid program or service, rather
 26 than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

27 (c) giving priority to services that employ the science of prevention to reduce disability and illness,
 28 services that treat life-threatening conditions, and services that support independent or assisted living, including
 29 pain management, to reduce the need for acute inpatient or residential care.

30 (3) Medical assistance provided by the Montana medicaid program includes the following services:

- 1 (a) inpatient hospital services;
- 2 (b) outpatient hospital services;
- 3 (c) other laboratory and x-ray services, including minimum mammography examination as defined in
4 33-22-132;
- 5 (d) skilled nursing services in long-term care facilities;
- 6 (e) physicians' services;
- 7 (f) nurse specialist services;
- 8 (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- 9 (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in
10 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- 11 (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant
12 women;
- 13 (j) services that are provided by physician assistants within the scope of their practice and that are
14 otherwise directly reimbursed as allowed under department rule to an existing provider;
- 15 (k) health services provided under a physician's orders by a public health department;
- 16 (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2); and
- 17 (m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as
18 provided in 33-22-153.
- 19 (4) Medical assistance provided by the Montana medicaid program may, as provided by department rule,
20 also include the following services:
- 21 (a) medical care or any other type of remedial care recognized under state law, furnished by licensed
22 practitioners within the scope of their practice as defined by state law;
- 23 (b) home health care services;
- 24 (c) private-duty nursing services;
- 25 (d) dental services;
- 26 (e) physical therapy services;
- 27 (f) mental health center services administered and funded under a state mental health program
28 authorized under Title 53, chapter 21, part 10;
- 29 (g) clinical social worker services;
- 30 (h) prescribed drugs, dentures, and prosthetic devices;

- 1 (i) prescribed eyeglasses;
- 2 (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- 3 (k) inpatient psychiatric hospital services for persons under 21 years of age;
- 4 (l) services of professional counselors licensed under Title 37, chapter 23;
- 5 (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- 6 (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case
7 management services for the mentally ill;
- 8 (o) services of psychologists licensed under Title 37, chapter 17;
- 9 (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h),
10 in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
- 11 (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- 12 (5) Services for persons qualifying for medicaid under the medically needy category of assistance, as
13 described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others
14 qualifying for assistance under the Montana medicaid program. The department is not required to provide all of
15 the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy
16 category of assistance.
- 17 (6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S.
18 department of health and human services, the department may implement limited medicaid benefits, to be known
19 as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined
20 in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult
21 recipients of medical assistance only who are covered under a group related to a program providing financial
22 assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection
23 (3) but may include those optional services listed in subsections (4)(a) through (4)(q) that the department in its
24 discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds
25 appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the
26 provision of a particular service is commonly covered by private health insurance plans. However, a recipient who
27 is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq.,
28 or is less than 21 years of age is entitled to full medicaid coverage.
- 29 (7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C.
30 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles,

1 and coinsurance for persons not otherwise eligible for medicaid.

2 (8) The department may not provide medicaid benefits to individuals who meet the eligibility requirements
3 of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) unless the legislature, as provided in [section 3], has authorized the
4 department to provide benefits to those individuals.

5 ~~(8)(9)~~ The department may set rates for medical and other services provided to recipients of medicaid
6 and may enter into contracts for delivery of services to individual recipients or groups of recipients.

7 ~~(9)(10)~~ The services provided under this part may be only those that are medically necessary and that
8 are the most efficient and cost-effective.

9 ~~(+0)(11)~~ The amount, scope, and duration of services provided under this part must be determined by
10 the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be
11 amended.

12 ~~(+1)(12)~~ Services, procedures, and items of an experimental or cosmetic nature may not be provided.

13 ~~(+2)(13)~~ If available funds are not sufficient to provide medical assistance for all eligible persons, the
14 department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical
15 services made available under the Montana medicaid program after taking into consideration the funding
16 principles set forth in subsection (2)."

17
18 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified
19 as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 3].

20
21 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

22 - END -