

## SENATE BILL NO. 77

INTRODUCED BY D. HARGROVE

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING PUBLIC ASSISTANCE; DEFINING FINANCIAL ASSISTANCE AND NONFINANCIAL ASSISTANCE TO COMPORT WITH FEDERAL LAW; REMOVING AUTHORITY FOR ONE-TIME-ONLY INCOME EXCLUSIONS FOR SPECIAL EMPLOYMENT-RELATED NEEDS; AUTHORIZING THE ADOPTION OF RULES GOVERNING THE DURATION OF BENEFITS AND ELIGIBILITY FOR NONFINANCIAL ASSISTANCE; CLARIFYING SANCTIONS FOR FAILURE OR REFUSAL TO COMPLY WITH FAMILY INVESTMENT AGREEMENTS; REMOVING REFERENCES TO PATHWAYS AND THE COMMUNITY SERVICES PROGRAM; REMOVING THE DESIGNATED COMPONENTS OF THE FAIM PROGRAM; AMENDING SECTIONS 23-1-303, 39-7-303, 39-71-118, 39-71-123, 40-4-215, 40-5-242, 40-5-248, 53-2-201, 53-2-211, 53-2-606, 53-2-610, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-2-904, 53-2-1103, 53-4-201, 53-4-202, 53-4-212, 53-4-214, 53-4-231, 53-4-233, 53-4-241, 53-4-246, 53-4-247, 53-4-602, 53-4-606, 53-4-611, 53-4-612, 53-4-613, 53-4-702, 53-4-704, 53-4-705, 53-4-706, 53-4-717, 53-6-101, 53-6-113, 53-6-131, 53-6-132, 53-6-134, AND 53-24-106, MCA; REPEALING SECTIONS 53-4-247, 53-4-603, 53-4-607, 53-4-608, AND 53-4-701, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 23-1-303, MCA, is amended to read:

**"23-1-303. Powers and duties of the division.** The division, in cooperation with the department, may:

- (1) hire a corps coordinator;
- (2) coordinate with state agencies to place eligible participants in work experience projects, including those recipients of ~~FAIM~~ financial assistance, as defined in ~~53-2-902~~ 53-4-201, utilizing grant diversion funding and to place youth who are under state supervision utilizing payments from the department of public health and human services;
- (3) develop and approve work experience projects that meet the requirements of this part;
- (4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(7) develop procedures for awarding incentive vouchers;

(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program."

**Section 2.** Section 39-7-303, MCA, is amended to read:

**"39-7-303. Definitions.** As used in this part, the following definitions apply:

(1) "Adult" means a person who is 18 years of age or older.

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(3) "Displaced homemaker" means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive financial assistance under the ~~FAIM financial assistance~~, as defined in ~~53-2-902~~ 53-4-201, pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender."

**Section 3.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for ~~participants in the FAIM project~~ recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's ~~FAIM~~ public assistance participants and may only be for the duration of each participant's training ~~in the FAIM project~~ while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the

provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the

weekly wage for weekly compensation benefits, the electing employer may elect not less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

**Section 4.** Section 39-71-123, MCA, is amended to read:

**"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness ~~periods~~;

(b) backpay or any similar pay made for or in ~~regards~~ regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance ~~provided through the FAIM project~~, as defined in ~~53-4-702~~ 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred."

**Section 5.** Section 40-4-215, MCA, is amended to read:

**"40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not



be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of ~~cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined in 53-2-902, food stamps, or public assistance~~ and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9).

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

- (a) parenting education;
- (b) mediation pursuant to 40-4-301;
- (c) factfinding by the investigator; and
- (d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child ~~has reached the age of~~ is 16 years of age or older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

**Section 6.** Section 40-5-242, MCA, is amended to read:

**"40-5-242. Notice of support lien -- civil liability upon failure to honor support lien or to comply with warrant for distraint.** (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law. Except as provided in subsections (1)(a) and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or ~~the FAIM financial assistance program~~ for temporary assistance for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distraint by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that

a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as [defined by 30-9-107] described by 30-9-321.

(Bracketed reference deleted July 1, 2001.)"

**Section 7.** Section 40-5-248, MCA, is amended to read:

**"40-5-248. Lien against real and personal property -- effect of lien -- interest -- warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as [defined in 30-9-107] described in 30-9-321.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established

pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or ~~the FAIR financial~~ for temporary assistance program for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under [30-9-401] 30-9-321. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued

or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247. (Bracketed references deleted July 1, 2001.)"

**Section 8.** Section 53-2-201, MCA, is amended to read:

**"53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, ~~FAIM~~ financial assistance and nonfinancial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) ~~provide services in respect to organization~~ organize and supervise ~~county departments~~ the local offices of public ~~welfare and county boards of public welfare~~ assistance in the ~~administration of public assistance functions and for efficiency and economy~~ an efficient and economical manner;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for ~~FAIM~~ financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

**Section 9.** Section 53-2-211, MCA, is amended to read:

**"53-2-211. Department to share eligibility data.** (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, ~~FAIM~~ financial assistance and nonfinancial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and ~~the~~ workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance; and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state and for no other purpose.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers'

compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, ~~FAIM~~ financial assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance. ~~The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose."~~

**Section 10.** Section 53-2-606, MCA, is amended to read:

**"53-2-606. Right of appeal.** (1) If an application for assistance for food stamps, ~~FAIM~~ financial assistance or nonfinancial assistance, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of public health and human services. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing of the decision. The department may have an additional ~~investigation~~ eligibility determination made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.

~~(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department."~~

**Section 11.** Section 53-2-610, MCA, is amended to read:

**"53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the department

shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department for:

(a) any portion of public assistance paid to a household eligible for ~~FAIM~~ financial assistance or nonfinancial assistance, as defined in 53-2-902, if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution are the financial responsibility of the appropriate county as provided in subsections (3)(b) through (3)(d).

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except when a court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the facilities listed in subsection (3)(a), the county that initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, the person may determine the county of residence when the person is restored to competency and released. The person becomes the financial responsibility of the new county of residence."

**Section 12.** Section 53-2-613, MCA, is amended to read:

**"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public assistance, including but not limited to ~~FAIM~~ financial assistance or nonfinancial assistance, as defined in 53-2-902, and medical assistance, ~~must~~ may be made to the county department of public welfare in the county



in ~~which the person is residing~~ any local office of public assistance. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for ~~FAM~~ financial assistance, as defined in 53-2-902, or for related medical assistance assigns to the state, to the department, and to the county ~~welfare department~~, if county funds were used to pay for services, all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than ~~FAM~~ financial assistance, as defined in 53-2-902, or for related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county ~~welfare department~~ all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support, including unpaid support that accrued before the applicant received public assistance, and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

- (i) the assignment of current support amounts has been terminated; and
- (ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

**Section 13.** Section 53-2-901, MCA, is amended to read:

**"53-2-901. Administration of food stamp program -- rulemaking authority.** (1) The department is authorized to administer the food stamp program in compliance with all federal laws and requirements.

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) periodic redetermination of eligibility;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) penalties applicable to recipients of ~~FAIM~~ financial assistance who have been sanctioned because of failure to meet any requirement of that program.

(4) The department may adopt rules that include but are not limited to rules concerning:

(a) requirements for recipients to assign the right of support;

(b) requirements for recipients to cooperate with the state agency administering the child support enforcement program established under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.; and

(c) disqualification for failure to perform actions required by other means-tested programs, for failure to cooperate with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq., or for failure to pay court-ordered child support as provided in sections 819, 822, and 823 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 U.S.C. 2015."

**Section 14.** Section 53-2-902, MCA, is amended to read:

**"53-2-902. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided in Title 2, chapter 15, part 22.

(2) "Employment and training demonstration project" means the employment and training program for recipients of ~~FAIM~~ financial assistance who are participating in the ~~FAIM~~ project.

~~(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.~~

~~(4)(3)~~ "FAIM project" means the families achieving independence in Montana project, including the ~~FAIM~~ financial assistance part established in ~~53-4-603~~, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(4) (a) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(b) The term does not include nonfinancial assistance.

(5) "Food stamp program" means the provision of food stamp benefits that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.

(6) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy

families, as provided in 45 CFR 260.31(b).

(7) "Temporary assistance for needy families" means the block grant established pursuant to 42 U.S.C. 601, et seq."

**Section 15.** Section 53-2-903, MCA, is amended to read:

**"53-2-903. Employment and training program.** The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. For purposes of the FAIM project, in accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its FAIM financial assistance employment and training program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project."

**Section 16.** Section 53-2-904, MCA, is amended to read:

**"53-2-904. Income and resource exclusions -- FAIM participants.** In accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may by rule establish special income and resource exclusions to be applied to participants of the FAIM project in determining their eligibility for food stamps and in determining the benefit amount. ~~Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in 53-4-603 in determining the recipients' eligibility for food stamps and determining the benefit amount."~~

**Section 17.** Section 53-2-1103, MCA, is amended to read:

**"53-2-1103. Definitions.** For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of FAIM that provides financial assistance, as defined in 53-2-902.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511)."

**Section 18.** Section 53-4-201, MCA, is amended to read:

**"53-4-201. Definitions.** As used in part 6 and this part, the following definitions apply:

(1) "ASSESSMENT" MEANS THE PROCESS OF EVALUATING A RECIPIENT'S SKILLS, EDUCATION, JOB READINESS, AND BARRIERS TO EMPLOYMENT. THE TERM MAY INCLUDE FURTHER IN-DEPTH EXAMINATION TO IDENTIFY AND ACCESS SERVICES AND RESOURCES TO ASSIST THE RECIPIENT IN ELIMINATING BARRIERS TO EMPLOYMENT IF BARRIERS ARE IDENTIFIED DURING THE INITIAL ASSESSMENT.

~~(1)(2)~~ "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)(3)~~ (a) "Dependent child", for public assistance purposes, means:

(i) a child under 18 years of age; or

(ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection ~~(2)(a)(i) or (2)(a)(ii)~~ (3)(A)(I) OR (3)(A)(II) must be living with a specified caretaker relative, as defined by the department by rule.

~~(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.~~

~~(4)(3)(4)~~ "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

~~(5)(4)(5)~~ "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be

a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

~~(6)(5)(6)~~ "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

~~(6)(7)~~ "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

~~(7)(8)~~ "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

~~(7)(8)(9)~~ "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

~~(8)(9)(10)~~ "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

~~(9)(10)(11)~~ "State plan" means the policies and procedures governing the state of Montana's FAIM financial assistance program project and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.

~~(10)(11)(12)~~ "Temporary assistance for needy families" means the federal block grant ~~that funds FAIM financial assistance and other programs to strengthen and preserve families established pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

**Section 19.** Section 53-4-202, MCA, is amended to read:

**"53-4-202. FAIM financial Financial assistance to be in effect in all counties.** (1) It is ~~mandatory and~~ required that the state plan and programs described in the state plan must be in effect in each county of the state.

(2) It is not required that the programs funded under ~~the~~ temporary assistance for needy families ~~block grant~~ be uniformly administered in each county of the state, provided that it is administered in accordance with all requirements of the state plan and federal law. The department may also administer demonstration programs pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects.

(3) An enrolled member of an Indian tribe participating in a program that is funded, at least in part, by ~~the~~ temporary assistance for needy families ~~block grant administered by the state of Montana~~ must be subject to the same rules, policies, and requirements as all other applicants for and recipients of benefits funded by ~~the~~

temporary assistance for needy families ~~block grant~~ unless an exception is expressly granted by federal law."

**Section 20.** Section 53-4-212, MCA, is amended to read:

**"53-4-212. Department to make rules.** (1) The department shall make rules and take action as necessary or desirable for the administration of ~~the FAM financial public assistance program and other programs funded under the temporary assistance for needy families block grant.~~

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, ~~and methods for computing benefit amounts,~~ and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives ~~participating in the community services program,~~ including cooperation with assessments, the number of hours of ~~community service work~~ participation required for each ~~per month,~~ specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for ~~FAM project~~ financial assistance participants recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) ~~maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received~~ eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) ~~exemptions from time limits in pathways and the community services program;~~

(~~f~~)(h) terms of ineligibility or sanctions against a specified caretaker ~~relative's~~ relative or other family member's ~~ineligibility for assistance because of failure~~ member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(~~f~~)(i) requirements, if any, for participation in ~~and exemptions from participation in and procedures and policies of the employment and training demonstration project;~~

- (k)(j) eligibility for and terms and conditions of extended ~~child-care~~ and medical assistance benefits;
- (h)(k) reporting requirements;
- (m)(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the ~~program~~ rules or requirements of a public assistance program;
- (n)(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;
- (o)(n) individuals who must be included as members of an assistance unit;
- (p)(o) categories of aliens who may receive assistance, if any;
- (q)(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;
- (r)(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;
- (s)(r) special eligibility or participation requirements applicable to teenage parents, if any; and
- (t)(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued."

**Section 21.** Section 53-4-214, MCA, is amended to read:

**"53-4-214. Distribution of copies of law and forms by department.** The department shall have printed and shall distribute copies of this part to all ~~county welfare departments~~ local offices of public assistance and shall prescribe the form of and print and supply to the ~~county welfare department~~ local offices of public assistance blanks of applications, reports, and other forms that may be necessary in relation to the ~~FAIM financial assistance and other administration of public assistance programs funded under the temporary assistance for needy families block grant.~~

**Section 22.** Section 53-4-231, MCA, is amended to read:

**"53-4-231. Eligibility.** (1) Subject to the provisions of subsections (2) through (5), assistance may be granted under this part to:

- (a) a dependent child;
- (b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents



of a dependent child who:

(i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department;

and

(ii) cooperates in all assessments and screening required by the department;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

(3) A person who, after August 22, 1996, has been convicted of a felony offense, an element of which involves the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is ineligible for public assistance unless the person:

(a) has satisfied all conditions of probation or parole, if any, associated with the felony conviction; and

(b) completes a chemical dependency assessment by a chemical dependency counselor approved by the department and based on the assessment:

(i) there is the absence of any current drug dependency; or

(ii) the person satisfactorily completes a course of treatment and all requirements recommended by the chemical dependency counselor.

~~(3)~~(4) The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) an adult or a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;

(e) families in which the specified caretaker relative or other adult household member, as specified by

the department by rule, fails or refuses to:

(i) cooperate in any required screening or assessment; or

(ii) enter into a family investment agreement required by the department under 53-4-606;

~~(e)(f)~~ teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

~~(f)(g)~~ teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

~~(g)(h)~~ a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; and

~~(h)(i)~~ individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; The ineligibility continues for a period of 10 years beginning on the date of conviction; ~~and~~

~~(i) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6).~~

~~(4)(5)~~ A family is not eligible for financial assistance if the family includes an adult who has received financial assistance in a program funded under the temporary assistance for needy families ~~block grant~~ in any state or states for 60 months or more, whether or not the months are consecutive, ~~except as provided by the department by rule in accordance with section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608~~ unless an exception is expressly granted by federal law.

~~(5)(6)~~ This part may not be interpreted to entitle any individual or family to assistance under programs funded by the temporary assistance for needy families ~~block grant.~~"

**Section 23.** Section 53-4-233, MCA, is amended to read:

**"53-4-233. Investigation of Eligibility determination for applications.** Whenever a county department ~~local office of public assistance~~ receives an application for assistance under this part, an ~~investigation~~ eligibility determination must be promptly made by the ~~county department~~ local office of public ~~welfare~~ assistance. Each applicant shall participate in any screening required by the department and must be informed of the applicant's right to a fair hearing and of the confidential nature of information secured. Upon completion of an ~~investigation~~ eligibility determination and any required screening, aid must be furnished promptly to all eligible persons. Each applicant must receive written notice of the decision concerning the applicant's request for assistance."

**Section 24.** Section 53-4-241, MCA, is amended to read:

**"53-4-241. Amount of assistance determined by department rules.** The amount of ~~FAIM~~ financial assistance or nonfinancial assistance granted in any case must be determined according to the rules and standards of assistance established by the department."

**Section 25.** Section 53-4-246, MCA, is amended to read:

**"53-4-246. (Temporary) County share of participation.** Except for recipients who are enrolled members of an Indian tribe, for each recipient of cash assistance in the FAIM project, the county where the recipient resides shall reimburse the department 22.5% of the nonfederal share of the approved temporary assistance for needy families grant for the recipient. However, a county is not required to reimburse the department more for temporary assistance for needy families grants for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996. For purposes of determining the nonfederal share, the federal share is considered to be equal to the federal medical assistance percentage paid to the states for medicaid benefits under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. (Terminates June 30, 2001--sec. 6, Ch. 341, L. 1999.)

**53-4-246. (Effective July 1, 2001) County share of participation.** Each county where the recipient of ~~FAIM~~ financial assistance resides shall reimburse the department in the amount equal to the percentage of the approved temporary assistance for needy families grants not paid with federal temporary assistance for needy families funds."

**Section 26.** Section 53-4-247, MCA, is amended to read:

**"53-4-247. County liability when recipient moves to another county.** A recipient of ~~FAIM~~ financial assistance who moves to another county in the state shall continue to receive assistance. The county that the recipient moves to must be charged by the department for the county share of assistance. The county that a recipient moves from shall notify the county that the recipient moves to."

**Section 27.** Section 53-4-602, MCA, is amended to read:

**"53-4-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cash assistance" means monetary payments to a recipient of ~~FAIM~~ financial assistance to meet basic needs, such as shelter, utilities, clothing, and personal needs.

(2) "Child-care assistance" means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "FAIM project" means the families achieving independence in Montana project, including a FAIM financial assistance part ~~established in 53-4-603~~, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315."

**Section 28.** Section 53-4-606, MCA, is amended to read:

**"53-4-606. Requirements for eligibility -- family investment agreement.** (1) Eligibility for FAIM financial assistance under the FAIM project with regard to income, resources, and all other factors of eligibility must be determined in accordance with the waivers granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315.

(2) (a) As a condition of eligibility for financial assistance ~~under pathways and the community services program~~, all specified caretaker relatives and other family members, as specified by the department by rule, shall enter into a family investment agreement with the department and shall comply with the terms of that agreement. ~~Entering into an agreement is not a condition of eligibility for the job supplement program.~~

(b) The family investment agreement must set forth the mutual obligations of the participant and the department to help the family achieve the goal of self-sufficiency. The agreement may contain provisions:

(i) regarding actions to be taken by the specified caretaker relative and by the department to secure child support;

(ii) requiring that the immunization and health-screening requirements of the early and periodic screening, diagnosis, and treatment program be met for all children in the family; ~~and~~

(iii) requiring the participant to cooperate in any assessments necessary to identify barriers to self-sufficiency and listing specific actions to be taken in order to eliminate any identified barriers; and

~~(iii)(iv)~~ (iv) specifying other services and activities appropriate for the participant or family.

(c) ~~An individual who is required to enter into a family investment agreement and who~~ Families in which the specified caretaker relative or other adult household member, as specified by rule, fails or refuses to enter into a family investment agreement without good cause ~~to do so or fails without good cause to comply with the individual's obligations under the agreement is~~ are ineligible, ~~as provided in 53-4-608~~, for FAIM financial assistance.

(d) An individual who is required to enter into a family investment agreement and who refuses or fails,

without good cause, to comply with the terms of the family investment agreement must be sanctioned in accordance with the rules and policies of the department.

~~(3) As a condition of eligibility for the community service program, a specified caretaker relative shall perform community service work as required by the department."~~

**Section 29.** Section 53-4-611, MCA, is amended to read:

**"53-4-611. Child-care assistance.** ~~(1) In the job supplement program component of the FAIM project,~~ The department may provide child-care assistance to all single-parent families receiving financial assistance if child care is necessary to allow the parent to engage in paid employment and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families receiving financial assistance if child care is necessary to allow either or both parents to engage in paid employment the activities required by a family investment agreement under 53-4-606 and if funding is available.

~~(2) In the pathways component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.~~

~~(3) In the community services program component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available."~~

**Section 30.** Section 53-4-612, MCA, is amended to read:

**"53-4-612. Extended child care and medical assistance benefits.** A family receiving FAIM financial assistance ~~under a component of the FAIM project~~ that loses eligibility for assistance because of increased income ~~from any source~~ may receive extended medical assistance benefits if funding is available, provided that the family's income does not exceed a percentage of the federal poverty level specified by the department by rule; ~~and may receive child-care assistance pursuant to 53-4-611 if funding is available."~~

**Section 31.** Section 53-4-613, MCA, is amended to read:

**"53-4-613. Employment and training program.** In cases in which the department determines that participation in the employment and training program would be appropriate for a ~~participant in pathways~~ recipient of financial assistance, the ~~participant~~ recipient may be required to participate in employment and training as one of the conditions of the ~~participant's~~ family investment agreement required under 53-4-606."

**Section 32.** Section 53-4-702, MCA, is amended to read:

**"53-4-702. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash payments, services, and noncash assistance.~~

~~(2)~~ (2) "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

(3) (a) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(b) The term does not include nonfinancial assistance.

(4) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

(5) "Temporary assistance for needy families" means the block grant program established pursuant to 42 U.S.C. 601, et seq."

**Section 33.** Section 53-4-704, MCA, is amended to read:

**"53-4-704. Placement of ~~FAIM~~ financial assistance recipients or food stamp program participants for purpose of training.** (1) The department or a person designated by the department may place an individual receiving financial assistance or participating in the ~~FAIM project~~ food stamp program into a position of employment with a public or private entity for the purpose of training the individual in the knowledge and skills necessary for the individual to become successfully employed.

(2) The department may, pursuant to subsection (1), place an individual ~~participating in the FAIM project~~ into a position at a worksite only with the permission and assistance of the public or private entity at the worksite under a written training agreement between the department and the entity.

(3) The placement of an individual into a position at a public or private worksite pursuant to subsection (1) is only for the purpose of training the individual in employment knowledge and skills and is not for the purpose of providing paid employment for the individual. The placement may not supplant an existing employment position or another individual already employed at the worksite. Placement of the individual at the public or private worksite pursuant to subsection (1) should last no longer than is necessary to achieve the employment training purposes of the ~~FAIM project~~ program.

(4) The private or public entity where an individual is placed pursuant to subsection (1) may choose whether or not to later employ the individual after the conclusion of the individual's training."

**Section 34.** Section 53-4-705, MCA, is amended to read:

**"53-4-705. Services and activities.** Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of ~~FAIM~~ financial assistance as specified by the department by rule."

**Section 35.** Section 53-4-706, MCA, is amended to read:

**"53-4-706. Participation requirements.** (1) Except as otherwise provided in this section, the department may require individuals to participate in the employment and training program as a condition of their eligibility for ~~FAIM~~ financial assistance.

(2) To the extent that the program is available and that state resources permit, the department shall require recipients of ~~FAIM~~ financial assistance ~~who are participating in the pathways component of the FAIM project~~ to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's family investment agreement as provided for in 53-4-606."

**Section 36.** Section 53-4-717, MCA, is amended to read:

**"53-4-717. Sanctions.** If an individual receiving ~~FAIM~~ financial assistance ~~under the FAIM project~~ is required to participate in the employment and training program as a condition of the individual's family investment agreement, as provided for in 53-4-606, and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department. Except as required by federal law, a sanction may not include any restriction or termination of food stamps or medicaid coverage, and child care benefits may only be continued for employment-related activities required by the family investment agreement that the ~~FAIM~~

participant has signed that are to be performed during the sanction period. The department may establish rules to ensure that individuals who participate in good faith are sanctioned properly and avail themselves of additional case management services to ensure compliance with the family investment agreement."

**Section 37.** Section 53-6-101, MCA, is amended to read:

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

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

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;



- (b) home health care services;
  - (c) private-duty nursing services;
  - (d) dental services;
  - (e) physical therapy services;
  - (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;
  - (g) clinical social worker services;
  - (h) prescribed drugs, dentures, and prosthetic devices;
  - (i) prescribed eyeglasses;
  - (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
  - (k) inpatient psychiatric hospital services for persons under 21 years of age;
  - (l) services of professional counselors licensed under Title 37, chapter 23;
  - (m) hospice care, as defined in 42 U.S.C. 1396d(o);
  - (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
  - (o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
  - (p) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- (4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving FAIM financial assistance, as defined in ~~53-4-702~~ 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to ~~the a program of FAIM providing~~ financial assistance, as defined in ~~53-4-702~~ 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion

specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature for the FAIM project and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

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

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

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

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

**Section 38.** Section 53-6-113, MCA, is amended to read:

**"53-6-113. Department to adopt rules.** (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and ~~as that~~ may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules ~~as that~~ are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that

the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

- (a) the availability of appropriated funds;
- (b) the actual cost of services;
- (c) the quality of services;
- (d) the professional knowledge and skills necessary for the delivery of services; and
- (e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

- (a) participation in managed care;
- (b) selection and qualifications for providers of managed care; and
- (c) standards for the provision of managed care.

(9) The department shall establish by rule income limits for eligibility for extended medical assistance

of persons receiving benefits from ~~FAIM~~ financial assistance, as defined in ~~53-4-702~~ 53-4-201, ~~as participants of the FAIM project~~ who lose eligibility because of increased income, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature ~~for the FAIM project.~~"

**Section 39.** Section 53-6-131, MCA, is amended to read:

**"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits ~~or receive from FAIM financial assistance, as defined in 53-4-702;~~ ~~benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.~~

(b) The person would be eligible for assistance under ~~a~~ the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under ~~one of the programs~~ program in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for

federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving ~~FAIM~~ financial assistance, as defined in ~~53-4-702~~ 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of ~~FAIM~~ financial assistance. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided

in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income."

**Section 40.** Section 53-6-132, MCA, is amended to read:

**"53-6-132. Application for assistance -- exception.** (1) ~~Except as provided in~~ Subject to subsection (2), application for assistance under this part ~~must~~ may be made ~~to the~~ in any local office of ~~the county department in the county in which the person is residing~~ public assistance. The application must be presented in the manner and on the form prescribed by the department of public health and human services. All individuals wishing to apply must have the opportunity to do so.

(2) Notwithstanding the provisions of subsection (1), the department may designate an entity other than ~~the county department~~ local office of public assistance to determine eligibility for medicaid managed care services."

**Section 41.** Section 53-6-134, MCA, is amended to read:

**"53-6-134. Extension of eligibility for medical assistance to persons terminated from FAIM financial assistance.** (1) In providing for the extension of eligibility for medical assistance under subsection (2), the department may provide for health insurance or other health coverage in accordance with subsections

1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, regarding the provision of medical assistance.

(2) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may provide extended eligibility for medical assistance for a period of time established by the department by rule for persons receiving FAIM financial assistance, as defined in ~~53-4-702~~ 53-4-201, ~~under the job supplement program, pathways, or community services program components of the FAIM project described in 53-4-603~~ who lose eligibility because of increased income from any source ~~or because of exhausting time-limited earned income disregards~~, provided that the family's income does not exceed a percentage of the federal poverty level established by the department by rule. The department, in exercising its discretion to establish income standards and duration of extended medical assistance by rule, may consider the amount of funds appropriated by the legislature ~~for the FAIM project.~~"

**Section 42.** Section 53-24-106, MCA, is amended to read:

**"53-24-106. Criminal laws limitation.** (1) ~~No~~ A county, municipality, or other political subdivision may not adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) ~~Nothing in this~~ This section ~~affects~~ does not affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(3) This section does not prevent the department from imposing a sanction on or denying eligibility to applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program requirements."

NEW SECTION. **Section 43. Coordination instruction.** If \_\_\_ Bill No. \_\_\_ [LC 428] is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices.

NEW SECTION. **Section 44. Repealer.** Sections 53-4-247, 53-4-603, 53-4-607, 53-4-608, and 53-4-701, MCA, are repealed.

NEW SECTION. **Section 45. Effective date.** [This act] is effective July 1, 2001.

- END -