

SENATE BILL NO. 336

INTRODUCED BY B. KEENAN

1

2

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RULEMAKING PROCEDURES;

5 REQUIRING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INCLUDE CERTAIN

6 INFORMATION IN RULEMAKING NOTICES PERTAINING TO THE DELIVERY OF MEDICAID SERVICES;

7 REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PREPARE AND

8 ELECTRONICALLY SEND A STATEMENT OF FINDINGS TO INTERESTED PERSONS CONCERNING THE

9 RULE'S INTENDED OUTCOMES WITHIN A YEAR AFTER THE RULE'S EFFECTIVE DATE IF THE RULE

10 PERTAINS TO THE DELIVERY OF MEDICAID SERVICES; PROVIDING EXCEPTIONS; ALLOWING AN

11 IMPACTED BUSINESS, IMPACTED CONTRACTOR, OR ELECTED OFFICIAL TO REQUEST AND RECEIVE

12 AN ECONOMIC IMPACT STATEMENT FOR RULES PROPOSED BY THE DEPARTMENT OF PUBLIC HEALTH

13 AND HUMAN SERVICES; AMENDING PAYMENTS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN

14 SERVICES IS ENTITLED TO COLLECT FROM CERTAIN PROVIDERS; AMENDING ~~SECTION~~ SECTIONS

15 2-4-405 AND 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

16

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

18

19 NEW SECTION. **Section 1. Performance-based rulemaking -- privacy exemption.** (1) The notice

20 of a proposed substantive rule concerning the delivery of medicaid services by the department of public health

21 and human services must include, in addition to the other requirements under this chapter:

22 (a) the method the department of public health and human services will use to measure whether or not

23 the principal reasons and the rationale for the intended action of the rule, as provided by 2-4-305(6)(b), are

24 successfully achieved, including any data collection methods or metrics if applicable; and

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

26 if applicable.

27 (2) (a) No later than 1 year after the effective date of the rule subject to subsection (1), the department

28 of public health and human services shall prepare a concise statement of findings evaluating whether, using the

29 data collection or metric identified in the rule proposal, the data collected after the rule's effective date indicated

30 that the rule successfully achieved its intended outcomes. The department of public health and human services

1 shall promulgate the statement of findings to the department's list of interested persons via electronic notification.

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

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

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

8

9 **Section 2.** Section 2-4-405, MCA, is amended to read:

10 **"2-4-405. Economic impact statement.** (1) Upon written request of ~~an impacted business, impacted~~
11 ~~contractor, elected official, or~~ the appropriate administrative rule review committee based upon the affirmative
12 request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement
13 of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also
14 prepare a statement upon receipt by the agency or the committee of a written request for a statement made by
15 at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy
16 of the request, and if ~~the a~~ THE request is received by the agency, the agency shall give the committee a copy
17 of the request. As an alternative, ~~if the committee originated the request, the committee~~ may, by contract, prepare
18 the estimate.

19 (2) Except to the extent that the request expressly waives any one or more of the following, the
20 requested statement must include and the statement prepared by the committee may include:

21 (a) a description of the classes of persons who will be affected by the proposed rule, including classes
22 that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

23 (b) a description of the probable economic impact of the proposed rule upon affected classes of persons,
24 including but not limited to providers of services under contracts with the state and affected small businesses,
25 and quantifying, to the extent practicable, that impact;

26 (c) the probable costs to the agency and to any other agency of the implementation and enforcement
27 of the proposed rule and any anticipated effect on state revenue;

28 (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of
29 inaction;

30 (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the

1 purpose of the proposed rule;

2 (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were
3 seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

4 (g) a determination as to whether the proposed rule represents an efficient allocation of public and
5 private resources; and

6 (h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and
7 an explanation of how the data was gathered.

8 (3) A request to an agency for a statement or a decision to contract for the preparation of a statement
9 must be made prior to the final agency action on the rule. The completed statement must be filed with the
10 appropriate administrative rule review committee ~~and the impacted business, impacted contractor, or elected~~
11 ~~official, if applicable,~~ within 3 months of the request or decision. A request or decision for an economic impact
12 statement may be withdrawn at any time.

13 (4) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement.
14 If the committee determines that the statement is insufficient, the committee may return it to the agency or other
15 person who prepared the statement and request that corrections or amendments be made. If the committee
16 determines that the statement is sufficient, a notice, including a summary of the statement and indicating where
17 a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register
18 by the agency preparing the statement or by the committee, if the statement is prepared under contract by the
19 committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking
20 proceedings.

21 (5) This section does not apply to rulemaking pursuant to 2-4-303.

22 (6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result
23 of the inaccuracy or inadequacy of a statement required under this section.

24 (7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the
25 factors listed in this section satisfies the provisions of this section.

26 (8) FOR RULES PROPOSED TO BE ADOPTED, AMENDED, OR REPEALED BY THE DEPARTMENT OF PUBLIC HEALTH
27 AND HUMAN SERVICES, AN IMPACTED BUSINESS, IMPACTED CONTRACTOR, OR ELECTED OFFICIAL MAY REQUEST AN
28 ECONOMIC IMPACT STATEMENT AND, IF REQUESTED, MUST RECEIVE THE COMPLETED STATEMENT."

29

30 **SECTION 3. SECTION 53-6-111, MCA, IS AMENDED TO READ:**

1 **"53-6-111. Department charged with administration and supervision of medical assistance**
 2 **program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules.**

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

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

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

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

13 **(b) For the purposes of determining whether the provider's interpretation of a pertinent rule or billing code**
 14 **is unreasonable pursuant to subsection (2)(a)(i), the provider's interpretation is unreasonable if:**

15 **(i) it directly conflicts with a written interpretation of the department in existence at the time of the billing**
 16 **for that rule or billing code; or**

17 **(ii) if there was no written interpretation of the department in existence at the time of the billing for that**
 18 **rule or billing code, the department demonstrates by a preponderance of the evidence that the provider's**
 19 **interpretation is unreasonable.**

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

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

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

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

30 ~~(e)(f)~~ The fact that a provider may have ceased providing services or items under the medical assistance

1 program, may no longer be in business, or may no longer operate a facility, practice, or business does not excuse
2 repayment under this subsection (2).

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

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

8 (a) required courses of education in the rules governing the medicaid program;

9 (b) suspension of participation in the program for a specified period of time;

10 (c) permanent termination of participation in the medical assistance program; and

11 (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties
12 applicable to a specific activity, act, or omission involving intentional or knowing violation of specified standards.

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

16 (6) The remedies provided by this section are separate and cumulative to any other administrative, civil,
17 or criminal remedies available under state or federal law, regulation, rule, or policy."

18
19 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to [section 1].

21
22 **NEW SECTION. Section 5. Effective date.** [This act] is effective July 1, 2015.

23
24 **NEW SECTION. Section 6. Applicability.** [Section 1] applies to rule notices published by the
25 department of public health and human services on or after [the effective date of this act].

26 - END -