

SENATE BILL NO. 336

INTRODUCED BY B. KEENAN

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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 SECTION 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY~~
16 DATE."

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

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20 NEW SECTION. Section 1. Performance-based rulemaking -- privacy exemption. (1) ~~The~~ EXCEPT
21 FOR RULES IMPLEMENTING RATE INCREASES OR IMPLEMENTING FEDERAL LAW OR REGULATION, THE notice of a proposed
22 ~~substantive~~ rule concerning the delivery of medicaid services by the department of public health and human
23 services must include, in addition to the other requirements under this chapter:

24 (a) A DETERMINATION OF WHETHER THE PRINCIPAL REASONS AND RATIONALE FOR THE RULE CAN BE ASSESSED
25 BY PERFORMANCE-BASED MEASURES AND, IF SUCH AN ASSESSMENT CAN BE MADE, the method the department of public
26 health and human services will use to measure whether or not the principal reasons and the rationale for the
27 intended action of the rule, as provided by 2-4-305(6)(b), are successfully achieved, including any data collection
28 methods or metrics if applicable; and

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

1 (2) (a) No later than 1 year after the effective date of the rule subject to subsection (1), the department
 2 of public health and human services shall prepare a concise statement of findings evaluating whether, using the
 3 data collection or metric identified in the rule proposal, the data collected after the rule's effective date indicated
 4 that the rule successfully achieved its intended outcomes. The department of public health and human services
 5 shall promulgate POST the statement of findings to the department's list of interested persons via electronic
 6 notification ON ITS WEBSITE.

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

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

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

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 14 ~~Section 2.~~ Section 2-4-405, MCA, is amended to read:

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

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

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

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

- 1 ~~———(c) the probable costs to the agency and to any other agency of the implementation and enforcement~~
2 ~~of the proposed rule and any anticipated effect on state revenue;~~
- 3 ~~———(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of~~
4 ~~inaction;~~
- 5 ~~———(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the~~
6 ~~purpose of the proposed rule;~~
- 7 ~~———(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were~~
8 ~~seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;~~
- 9 ~~———(g) a determination as to whether the proposed rule represents an efficient allocation of public and~~
10 ~~private resources; and~~
- 11 ~~———(h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and~~
12 ~~an explanation of how the data was gathered.~~
- 13 ~~———(3) A request to an agency for a statement or a decision to contract for the preparation of a statement~~
14 ~~must be made prior to the final agency action on the rule. The completed statement must be filed with the~~
15 ~~appropriate administrative rule review committee and the impacted business, impacted contractor, or elected~~
16 ~~official, if applicable, within 3 months of the request or decision. A request or decision for an economic impact~~
17 ~~statement may be withdrawn at any time.~~
- 18 ~~———(4) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement.~~
19 ~~If the committee determines that the statement is insufficient, the committee may return it to the agency or other~~
20 ~~person who prepared the statement and request that corrections or amendments be made. If the committee~~
21 ~~determines that the statement is sufficient, a notice, including a summary of the statement and indicating where~~
22 ~~a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register~~
23 ~~by the agency preparing the statement or by the committee, if the statement is prepared under contract by the~~
24 ~~committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking~~
25 ~~proceedings.~~
- 26 ~~———(5) This section does not apply to rulemaking pursuant to 2-4-303.~~
- 27 ~~———(6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result~~
28 ~~of the inaccuracy or inadequacy of a statement required under this section.~~
- 29 ~~———(7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the~~
30 ~~factors listed in this section satisfies the provisions of this section.~~

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

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 5 **SECTION 2.** SECTION 53-6-111, MCA, IS AMENDED TO READ:

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

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

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

13 (i) the amount of a payment under this part to which the provider was not entitled, ~~regardless of whether~~
 14 ~~the incorrect payment was the result of department or provider error or other cause~~ if the incorrect payment was
 15 the result of the provider's unreasonable interpretation of the pertinent rule or billing code ERROR OR IF THE
 16 PROVIDER'S INTERPRETATION OF THE PERTINENT RULE OR BILLING CODE IS NOT REASONABLE; and

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

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

21 ~~_____ (i) it directly conflicts with a written interpretation of the department in existence at the time of the billing~~
 22 ~~for that rule or billing code; or~~

23 ~~_____ (ii) if there was no written interpretation of the department in existence at the time of the billing for that~~
 24 ~~rule or billing code, the department demonstrates by a preponderance of the evidence that the provider's~~
 25 ~~interpretation is unreasonable.~~

26 (B) IF THE DECISION REGARDING THE AMOUNT OF A PAYMENT TO WHICH THE PROVIDER WAS NOT ENTITLED
 27 DEPENDS ON AN INTERPRETATION OF A PERTINENT RULE OR BILLING CODE, THE PROVIDER HAS THE BURDEN OF PROVING
 28 THAT ITS INTERPRETATION IS REASONABLE AND CONSISTENT WITH:

29 (I) THE INFORMATION GIVEN TO PROVIDERS IN ANY APPLICABLE MONTANA MEDICAID PROVIDER RULES OR
 30 MANUAL, INCLUDING BUT NOT LIMITED TO THE CODING RESOURCES IDENTIFIED IN OR INCORPORATED BY REFERENCE IN

1 ANY APPLICABLE MONTANA MEDICAID PROVIDER RULE OR MANUAL; AND

2 (II) ANY WRITTEN INTERPRETATIONS BY THE DEPARTMENT THAT WERE IN EXISTENCE AT THE TIME PAYMENT WAS
3 MADE TO THE PROVIDER.

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

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

9 (i) withholding current payments to offset the amount due;

10 (ii) applying methods and using a schedule mutually agreeable to the department and the provider; or

11 (iii) any other legal means.

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

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

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

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

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

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

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

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

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

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

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

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

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6 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2015.

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

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