

SENATE BILL NO. 335

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATION AGAINST FEDERALLY CERTIFIED HEALTH ENTITIES IN CERTAIN HEALTH-RELATED CONTRACTS; AMENDING SECTIONS 33-22-101, 33-22-170, AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Contract coverage -- nondiscrimination -- penalty.** (1) A health insurance issuer, a plan sponsor not subject to the Employee Retirement Income Security Act of 1974, as amended, or a pharmacy benefit manager may not include in a contract with a federally certified health entity provisions that allow:

(a) payment for a prescription drug to the federally certified health entity or a contract pharmacy at less than the state rate determined by surveys used to develop national average drug acquisition costs for the centers for medicare and medicaid services, or, if a national average drug acquisition cost has not been calculated, a payment less than the wholesale acquisition cost described in 42 U.S.C. 1395w-3a(c)(6)(B); or

(b) an additional fee or charge or other adjustment that is imposed only on the federally certified health entity or its contract pharmacy. Other adjustments under this subsection (1)(b) include but are not limited to payment of a lower dispensing fee or requiring an add-on payment.

(2) A patient eligible to receive drugs under an agreement covered by 42 U.S.C. 256b may not be discriminated against through conditions imposed on a federally certified health entity or its contract pharmacy through which the patient is eligible to receive drugs.

(3) If a health insurance issuer, plan sponsor not subject to Employee Retirement Income Security Act of 1974, as amended, or a pharmacy benefit manager is found guilty of violating subsection (1) or (2), the insurance commissioner shall impose a fine for each separate entity not to exceed \$5,000 for each violation, subject to a maximum fine of no more than \$100,000 in any year.

Section 2. Section 33-22-101, MCA, is amended to read:



1 **"33-22-101. Exceptions to scope.** (1) Subject to subsection (2), parts 1 through 4 of this chapter,
 2 except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136,
 3 33-22-138, 33-22-140, 33-22-141, 33-22-142, 33-22-153, 33-22-243, and 33-22-304, and part 19 of this chapter
 4 do not apply to or affect:

5 (a) any policy of liability or workers' compensation insurance with or without supplementary expense
 6 coverage;

7 (b) any group or blanket policy;

8 (c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those
 9 provisions relating to disability insurance that:

10 (i) provide additional benefits in case of death or dismemberment or loss of sight by accident or
 11 accidental means; or

12 (ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit
 13 or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or
 14 supplemental contract;

15 (d) reinsurance.

16 (2) Sections 33-22-137, 33-22-150 through 33-22-152, [section 1], and 33-22-301 apply to group or
 17 blanket policies."

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19 **Section 3.** Section 33-22-170, MCA, is amended to read:

20 **"33-22-170. Definitions.** As used in 33-22-170 through 33-22-174 and [section 1], the following
 21 definitions apply:

22 (1) "Contract pharmacy" means a pharmacy operating under contract with a federally certified health
 23 entity to provide dispensing services to the federally certified health entity.

24 (2) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).

25 ~~(+)~~(3) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that
 26 sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

27 ~~(2)~~(4) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant
 28 to Title 37, chapter 7.

29 ~~(3)~~(5) "Pharmacy" means an established location, either physical or electronic, that is licensed by the
 30 board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy

1 benefit manager, health insurance issuer, or plan sponsor.

2 ~~(4)(6)~~ "Pharmacy benefit manager" means a person who contracts with pharmacies on behalf of a health
3 insurance issuer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail
4 network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.

5 ~~(5)(7)~~ "Reference pricing" means a calculation for the price of a pharmaceutical that uses the most
6 current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other
7 products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer,
8 or pharmacy benefit manager and a pharmacy or pharmacist."

9

10 **Section 4.** Section 33-31-111, MCA, is amended to read:

11 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided
12 in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization
13 authorized to transact business under this chapter. This provision does not apply to an insurer or health service
14 corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state
15 except with respect to its health maintenance organization activities authorized and regulated pursuant to this
16 chapter.

17 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its
18 representatives is not a violation of any law relating to solicitation or advertising by health professionals.

19 (3) A health maintenance organization authorized under this chapter is not practicing medicine and is
20 exempt from Title 37, chapter 3, relating to the practice of medicine.

21 (4) This chapter does not exempt a health maintenance organization from the applicable certificate of
22 need requirements under Title 50, chapter 5, parts 1 and 3.

23 (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary
24 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.
25 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701
26 through 33-3-704.

27 (6) This section does not exempt a health maintenance organization from:

28 (a) prohibitions against interference with certain communications as provided under Title 33, chapter 1,
29 part 8;

30 (b) the provisions of Title 33, chapter 22, parts 7 and 19;

1 (c) the requirements of 33-22-134 and 33-22-135;
2 (d) network adequacy and quality assurance requirements provided under chapter 36; or
3 (e) the requirements of Title 33, chapter 18, part 9.
4 (7) Title 33, chapter 1, parts 12 and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts 13,
5 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, 33-15-308, Title 33, chapter 17, Title 33,
6 chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141,
7 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, [section 1], 33-22-244, 33-22-246, 33-22-247,
8 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and Title 33, chapter 32, apply to health
9 maintenance organizations."

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11 **NEW SECTION. Section 5. Notification to tribal governments.** The secretary of state shall send a
12 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
13 Chippewa tribe.

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15 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].
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18 **NEW SECTION. Section 7. Effective date -- applicability.** [This act] is effective on passage and
19 approval and applies to contracts and agreements signed on or after [the effective date of this act].

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