

HOUSE BILL NO. 747

INTRODUCED BY T. WOODS, M. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PRICING BY CERTAIN HEALTH CARE FACILITIES; ESTABLISHING CEILINGS ON HEALTH CARE FACILITY PRICES; PROVIDING STATE AUDITOR REVIEW OF HEALTH CARE FACILITY PRICES; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 50-5-103, 50-5-104, 50-5-106, AND 50-5-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Legislative findings -- purpose.** (1) The legislature finds that many health care facilities exert monopolistic control over pricing and delivery of health care.

- (2) The legislature further finds that the increasing costs of health care services have:
 - (a) made it difficult for many Montanans to afford necessary health care services;
 - (b) contributed to the costs of health care insurance; and
 - (c) gravely impacted the ability of employers to operate competitively if they choose to offer health insurance coverage to their employees.

(3) The legislature further finds that many Montana health care facilities are organized as nonprofit entities and as such receive a tax benefit from the public.

(4) It is the intent of the legislature that the prices billed by certain health care facilities be reviewed and approved to ensure that:

- (a) consumers and health insurance issuers pay for charges that are reasonable and just; and
- (b) the tax exemption benefits available to facilities are extended to the public through differential limitations on prices charged by those facilities.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

- (1) "Health care facility" or "facility" means any of the following as the terms are defined in 50-5-101:
 - (a) a hospital;



- 1 (b) a critical access hospital;
2 (c) an outpatient center for surgical services; and
3 (d) a specialty hospital.

4 (2) (a) "Price" means the price that a health care facility bills for a medical procedure, service, supply,
5 or episode of care.

6 (b) The term does not mean the amount that a health care facility will accept as payment in full from a
7 patient or third-party payer.

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9 **NEW SECTION. Section 3. State auditor approval of certain health care facility prices --**

10 **community benefit calculation.** (1) Unless approved by the state auditor, a health care facility may not charge
11 a price that exceeds the reimbursement rate allowed by the medicare program established pursuant to Title XVIII
12 of the federal Social Security Act, 42 U.S.C. 1395, et seq., multiplied by:

- 13 (a) 2.5, if the facility is a nonprofit organization; and
14 (b) 3.5, if the facility is a for-profit entity.

15 (2) A health care facility shall submit to the state auditor a request to approve a price that exceeds the
16 price allowed under subsection (1).

17 (3) The request must include:

- 18 (a) a summary of the justification for the proposed price;
19 (b) an estimate of the number of consumers who will be affected by the proposed price; and
20 (c) additional information as required by rule.

21 (4) A health care facility seeking approval of a price pursuant to subsection (2) shall publish notice of the
22 proposed price and the proposed effective date on its website.

23 (5) The state auditor shall review the price request in accordance with the requirements of [sections 1
24 through 8] and approve or deny the price within 30 days.

25 (6) The state auditor may not review health care facility prices that are required or set under a federal
26 or state medical assistance program.

27 (7) Free or discounted care provided as part of the health care facility's community benefit may not be
28 calculated at a price exceeding the price set in subsection (1) for the purpose of calculating the community benefit
29 provided.

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1 **NEW SECTION. Section 4. Examination of records by state auditor -- maintenance of records.**

2 (1) A health care facility shall maintain records related to its request for approval of a price that exceeds the
3 amount allowed under [section 3] and make the records available to the state auditor upon request.

4 (2) A health care facility may not willfully withhold information from or knowingly give false or misleading
5 information to the state auditor about any factor affecting the health care facility's price request.

6
7 **NEW SECTION. Section 5. Decision of state auditor -- review of adverse decision.** (1) If the state

8 auditor finds the proposed price is unjust, unreasonable, or unjustly discriminatory, the auditor shall deny the
9 request. If a request is denied, the price must continue to comply with [section 3].

10 (2) A health care facility may request a hearing on an adverse decision. The request must be submitted
11 in writing, and the hearing must be conducted pursuant to Title 2, chapter 4, part 6.

12
13 **NEW SECTION. Section 6. Auditor authority to investigate health care facility prices.** (1) The state

14 auditor may conduct investigations, as authorized under 33-1-311(4) and as the auditor considers necessary, to
15 ensure compliance with [sections 1 through 8].

16 (2) The state auditor shall maintain the confidentiality of any protected health information obtained in the
17 course of an investigation, in accordance with federal regulations related to the federal Health Insurance
18 Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et. seq., and the confidentiality provisions of Title
19 50, chapter 16.

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21 **NEW SECTION. Section 7. Penalty.** (1) The state auditor may, after having conducted a hearing

22 pursuant to Title 2, chapter 4, part 6, impose a fine not to exceed \$5,000 per violation on a health care facility that
23 fails to seek approval of a price increase that exceeds the amount allowed under [section 3] or to comply with a
24 final order of the state auditor.

25 (2) The state auditor shall collect the amount payable and may bring an action to enforce collection. The
26 penalties may be in addition to any other penalties provided by law.

27
28 **NEW SECTION. Section 8. Fees -- rulemaking.** The state auditor shall establish by rule fees

29 commensurate with the costs of carrying out [sections 1 through 8] and may adopt other rules as needed to carry
30 out the provisions of [sections 1 through 8].

- 1
- 2 **Section 9.** Section 50-5-103, MCA, is amended to read:
- 3 **"50-5-103. Rules and standards -- accreditation.** (1) The department shall adopt rules and minimum
- 4 standards for implementation of parts 1 and 2.
- 5 (2) Any facility covered by this chapter shall comply with:
- 6 (a) the state and federal requirements relating to construction, equipment, and fire and life safety; and
- 7 (b) if applicable, the requirements of [sections 1 through 8].
- 8 (3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon
- 9 adoption.
- 10 (4) (a) Any hospital located in this state that furnishes written evidence required by the department,
- 11 including the recommendation for future compliance statements, to the department of its accreditation granted
- 12 by an entity listed in subsection (4)(b) is eligible for licensure in the state for the accreditation period and may not
- 13 be subjected to an inspection by the department for purposes of the licensing process.
- 14 (b) A hospital may provide evidence of its accreditation by:
- 15 (i) DNV healthcare, inc.;
- 16 (ii) the healthcare facilities accreditation program; or
- 17 (iii) the joint commission.
- 18 (c) The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health
- 19 care facility to answer specific complaints made in writing by any person against the facility when the complaints
- 20 pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing
- 21 pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which
- 22 the complaint pertains.
- 23 (5) The department may consider as eligible for licensure during the accreditation period any health care
- 24 facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation
- 25 for future compliance statements, of its accreditation by the joint commission. The department may inspect a
- 26 health care facility considered eligible for licensure under this section to ensure compliance with state licensure
- 27 standards.
- 28 (6) The department may consider as eligible for licensure during the accreditation period any
- 29 rehabilitation facility that furnishes written evidence, including the recommendation for future compliance
- 30 statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The

1 department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure
2 compliance with state licensure standards.

3 (7) The department may consider as eligible for licensure during the accreditation period any outpatient
4 center for surgical services that furnishes written evidence, including the recommendation for future compliance
5 statements, of accreditation of its programs by the accreditation association for ambulatory health care. The
6 department may inspect an outpatient center for surgical services considered eligible for licensure under this
7 section to ensure compliance with state licensure standards.

8 (8) The department may consider as eligible for licensure during the accreditation period any behavioral
9 treatment program, chemical dependency treatment program, residential treatment facility, or mental health
10 center that furnishes written evidence, including the recommendation for future compliance statements, of
11 accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment
12 program, chemical dependency treatment program, residential treatment facility, or mental health center
13 considered eligible for licensure under this section to ensure compliance with state licensure standards."
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15 **Section 10.** Section 50-5-104, MCA, is amended to read:

16 **"50-5-104. Certain exemptions for spiritual healing institution.** Parts 1 through 3 and rules and
17 standards adopted by the department may not authorize the supervision, regulation, or control of care or
18 treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual
19 means in accordance with the creed or tenets of any well-recognized church or religious denomination. However,
20 a license is required and the minimum standards referred to in 50-5-103(2)(a) apply."
21

22 **Section 11.** Section 50-5-106, MCA, is amended to read:

23 **"50-5-106. Records and reports required of health care facilities -- confidentiality.** Health care
24 facilities shall keep records and make reports as required by the department and, if applicable, [sections 1
25 through 8]. Before February 1 of each year, every licensed health care facility shall submit an annual report for
26 the preceding calendar year to the department. The report must be on forms and contain information specified
27 by the department. Information received by the department through reports, inspections, or provisions of parts
28 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses
29 information that would identify a patient must be dismissed from employment and subject to the provisions of
30 45-7-401 and 50-16-551, if applicable, unless the disclosure was authorized as permitted by law. Information and

1 statistical reports from health care facilities which are considered necessary by the department for health planning
2 and resource development activities must be made available to the public and the health planning agencies within
3 the state. Applications by health care facilities for certificates of need and any information relevant to review of
4 these applications, pursuant to part 3, must be accessible to the public."

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6 **Section 12.** Section 50-5-111, MCA, is amended to read:

7 **"50-5-111. Prohibited activities.** It is unlawful to:

8 (1) operate a facility without a license;

9 (2) prevent, interfere with, or impede department investigation, department enforcement, department
10 examination of relevant books and records, or activities of the department concerning the preservation of
11 evidence; or

12 (3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted
13 or issued pursuant to part 1 or 2; or

14 (4) for a health care facility subject to [sections 1 through 8], operate in violation of the requirements of
15 the applicable provisions of [sections 1 through 8]."

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17 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 8] are intended to be
18 codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1
19 through 8].

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21 **NEW SECTION. Section 14. Effective date.** [This act] is effective January 1, 2020.

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