

1 HOUSE BILL NO. 686
 2 INTRODUCED BY M. REGIER
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE PROVISIONS OF HOUSE BILL NO. 2;
 5 REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT TO
 6 LEGISLATIVE COMMITTEES PRIOR TO TAKING CERTAIN ACTIONS; PROVIDING FOR THE TRANSFER
 7 OF THE BOULDER CAMPUS FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO
 8 THE DEPARTMENT OF JUSTICE; ESTABLISHING LIMITATIONS ON THE LENGTH OF MEDICAID
 9 COVERAGE FOR INDIVIDUALS ELIGIBLE UNDER THE HEALTH AND ECONOMIC LIVELIHOOD
 10 PARTNERSHIP ACT; PROVIDING A CONTINGENT APPROPRIATION; ELIMINATING THE PAIN
 11 MANAGEMENT EDUCATION AND TREATMENT SPECIAL REVENUE ACCOUNT; AMENDING ~~SECTION~~
 12 ~~SECTIONS~~ 50-46-345 AND 53-6-1304, MCA; REPEALING SECTION 50-46-346, MCA; AND PROVIDING AN
 13 EFFECTIVE DATE AND A TERMINATION DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. Section 1. Notification to legislative committees prior to action. (1) Prior to
 18 enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department of public
 19 health and human services shall report this information to the following committees:
 20 (a) the children, families, health, and human services interim committee; and
 21 (b) the legislative finance committee.
 22 (2) In its report to the committees, the department shall provide an explanation for the proposed
 23 changes and an estimated budget impact to the department over the next 4 fiscal years.

24
25 NEW SECTION. Section 2. Transfer of Boulder campus -- contingent appropriation. (1) The
 26 department of public health and human services and the department of justice may enter into a memorandum
 27 of understanding to transfer the Boulder campus from the department of public health and human services to
 28 the department of justice for use by the Montana highway patrol.



Amendment - 3rd Reading - Requested by: Carl Glimm

- 1 (2) The transfer may include the behavioral health facility located in Boulder.
- 2 (3) The transfer must be completed by December 31, 2021.
- 3 (4) If the Boulder campus is transferred to the department of justice by December 31, 2021, there is
- 4 appropriated \$500,000 from the general fund to the department of justice in each year of the biennium
- 5 beginning July 1, 2021.

6

7 **Section 3.** Section 50-46-345, MCA, is amended to read:

8 **"50-46-345. Medical marijuana state special revenue account -- operating reserve -- transfer of**
9 **excess funds.** (1) There is a medical marijuana state special revenue account within the state special revenue
10 fund established in 17-2-102.

11 (2) The account consists of:

- 12 (a) money deposited into the account pursuant to 50-46-344 and 50-46-347;
- 13 (b) the tax collected pursuant to Title 15, chapter 64, part 1; and
- 14 (c) civil penalties collected under this part.

15 (3) Except as provided in subsection (4), money in the account must be used by the department for
16 the purpose of administering the Montana Medical Marijuana Act and tracking system development.

17 (4) (a) At the end of each fiscal year, the department shall transfer funds in excess of a \$250,000
18 operating reserve as provided in this subsection (4).

19 (b) At the end of fiscal year 2019:

20 (i) the first \$2.5 million in excess funds must be transferred to the mental health services special
21 revenue account provided for in 53-21-1207; and

22 (ii) any remaining excess funds must be transferred to the ~~pain management education and treatment~~
23 ~~special revenue account provided for in 50-46-346~~ general fund.

24 (c) At the end of fiscal year 2020 and subsequent fiscal years, any excess funds must be transferred
25 to the ~~pain management education and treatment special revenue account provided for in 50-46-346~~ general
26 fund."

27

28 **Section 4.** Section 53-6-1304, MCA, is amended to read:

1 **"53-6-1304. (Temporary) Montana HELP Act program -- eligibility for coverage of health care**
2 **services -- exceptions.** (1) An individual is eligible for coverage of health care services provided pursuant to
3 this part if the individual meets the requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

4 (2) A program participant may not continue coverage under this part if, because of a permanent
5 increase in income as described in 53-6-1314 or another change in the participant's circumstances, the
6 participant no longer meets the requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

7 ~~(2)~~(3) The department may serve individuals who are eligible for medicaid-funded services pursuant
8 to this part through the medical assistance program established in Title 53, chapter 6, part 1, if the individuals
9 would be served more appropriately because the individuals:

10 (a) have exceptional health care needs, including but not limited to medical, mental health, or
11 developmental conditions;

12 (b) live in a geographical area, including an Indian reservation, that would not be effectively or
13 efficiently served through this part;

14 (c) need continuity of care that would not be available or cost-effective through this part;

15 (d) are exempt under the waiver implementing this part as of July 1, 2019; or

16 (e) are otherwise exempt under federal law. (Terminates June 30, 2025--secs. 38, 48, Ch. 415, L.
17 2019.)"

18
19 **NEW SECTION. Section 5. Repealer.** The following section of the Montana Code Annotated is
20 repealed:

21 50-46-346. Pain management education and treatment special revenue account.

22
23 **NEW SECTION. Section 6. Direction to department of public health and human services.** (1)

24 The legislature authorizes the department of public health and human services to revise, if necessary, the
25 pending section 1115 medicaid demonstration amendment and extension application titled "Montana health and
26 economic livelihood partnership (HELP) demonstration program" (project number 11-W-00300/8) to eliminate
27 the request for approval of 12-month continuous eligibility for the medicaid expansion population.

28 (2) If implementation of [section 4] would result in a reduction in the enhanced federal medical

1 assistance percentage provided for the medicaid program under the Families First Coronavirus Response Act
2 of 2020, the legislature directs the department to delay the implementation of those provisions until
3 implementation can occur without a reduction in the enhanced federal medical assistance percentage.
4

5 COORDINATION SECTION. **Section 7. Coordination instruction.** If both [this act] and House Bill
6 No. 497 are passed and approved, [section 1] must read:

7 **"Section 1. Notification to legislative committees prior to action.** (1) Prior to enacting changes to
8 provider rates, medicaid waivers, or the medicaid state plan, the department of public health and human
9 services shall report this information to the following committees:

- 10 (a) the children, families, health, and human services interim committee;
- 11 (b) the legislative finance committee; and
- 12 (c) the health and human services budget committee.

13 (2) In its report to the committees, the department shall provide an explanation for the proposed
14 changes and an estimated budget impact to the department over the next 4 fiscal years."
15

16 COORDINATION SECTION. **Section 8. Coordination instruction.** If both Senate Bill No. 225 and
17 [this act] are passed and approved and Senate Bill No. 225 contains a section amending 2-4-305, then the
18 section of Senate Bill No. 225 amending 2-4-305 must be amended to read as follows:

19 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall
20 fully consider written and oral submissions respecting the proposed rule, including comments submitted by the
21 primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule
22 that initially implements legislation.

23 (b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for
24 and against its adoption, incorporating in the statement the reasons for overruling the considerations urged
25 against its adoption. If substantial differences exist between the rule as proposed and as adopted and the
26 differences have not been described or set forth in the adopted rule as that rule is published in the register, the
27 differences must be described in the statement of reasons for and against agency action. When written or oral
28 submissions have not been received, an agency may omit the statement of reasons.

1 (ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by
2 the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not
3 incorporated into the adopted rule.

4 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to
5 statutory language in order to convey the meaning of a rule interpreting the language, the reference must
6 clearly indicate the portion of the language that is statutory and the portion that is an amplification of the
7 language.

8 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking
9 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted
10 rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule
11 purports to implement. A substantive rule may not be proposed or adopted unless:

12 (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject
13 matter of the rule as a subject upon which the agency shall or may adopt rules; or

14 (b) the rule implements and relates to a subject matter or an agency function that is clearly and
15 specifically included in a statute to which the grant of rulemaking authority extends.

16 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing
17 board or commission must include a citation to and description of the policy implemented. Each agency rule
18 implementing a policy and the policy itself must be based on legal authority and otherwise comply with the
19 requisites for validity of rules established by this chapter.

20 (5) ~~To~~ Except as provided in subsection (11) to be effective, each substantive rule adopted:

21 (a) must be within the scope of authority conferred and in accordance with standards prescribed by
22 other provisions of law; and

23 (b) may not implement a policy or relate to a subject matter that is substantially similar to the last
24 version of legislation that failed to pass in the previous regular session of the legislature. Legislation is
25 considered to have failed if, following introduction and a hearing in at least one committee, the legislation is not
26 enacted and was tabled in committee, failed a floor vote, or was vetoed. For the purposes of this subsection
27 (5)(b), a determination of "substantially similar" must be based on:

28 (i) the policy goals and legislative history of the failed legislation; and

(ii) textual similarities between the rule and the failed legislation.

(6) ~~Whenever~~ Except as provided in subsection (11), whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; ~~and~~

(b) not substantially similar to the last version of legislation that failed to pass in the previous regular session of the legislature. Legislation is considered to have failed if, following introduction and a hearing in at least one committee, the legislation is not enacted and was tabled in committee, failed a floor vote, or was vetoed. For the purposes of this subsection (6)(b), a determination of "substantially similar" must be based on:

(i) the policy goals and legislative history of the failed legislation; and

(ii) textual similarities between the rule and the failed legislation.

~~(b)(c)~~ reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit

1 must be determined with reference to the latest notice in all cases.

2 (8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies
3 in citations of authority for rules and in citations of sections implemented by rules.

4 (b) An agency may use an amended proposal notice but, except for clerical corrections, may not use
5 the adoption notice to correct deficiencies in a statement of reasonable necessity.

6 (c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for
7 reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a
8 clerical nature, the agency shall allow additional time for oral or written comments from the same interested
9 persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor
10 notification was required under 2-4-302, and from any other person who offered comments or appeared at a
11 hearing already held on the proposed rule.

12 (9) If a majority of the members of the appropriate administrative rule review committee notify the
13 committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the
14 committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice
15 and will address the objections at the next committee meeting. Following notice by the committee to the
16 agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication
17 of the last issue of the register that is published before expiration of the 6-month period during which the
18 adoption notice must be published, unless prior to that time, the committee meets and does not make the same
19 objection. A copy of the committee's notification to the agency must be included in the committee's records.

20 (10) This section applies to the department of labor and industry adopting a rule relating to a
21 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
22 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

23 (11) This section does not apply to department of public health and human services rules establishing
24 procedures for redetermining medicaid eligibility in accordance with 53-6-1304."

25

26 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2021.

27

28

Amendment - 3rd Reading - Requested by: Carl Glimm

67th Legislature

Drafter: Sue O'Connell, 406-444-3597

HB 686.1.6

1 **NEW SECTION. Section 10. Termination.** [Section 4] terminates June 30, 2025.

2 - END -

DRAFT