

1 SENATE BILL NO. 100
2 INTRODUCED BY C. SMITH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES FOR PREVENTING FRAUD IN
5 PUBLIC ASSISTANCE PROGRAMS; ESTABLISHING VERIFICATION REQUIREMENTS FOR
6 INFORMATION SUBMITTED BY APPLICANTS FOR AND RECIPIENTS OF CERTAIN PUBLIC ASSISTANCE
7 PROGRAMS; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO
8 CONTRACT FOR A VERIFICATION SYSTEM; PROVIDING DEFINITIONS; PROVIDING RULEMAKING
9 AUTHORITY; PROVIDING FOR CONTINGENT VOIDNESS; AND AMENDING SECTIONS 53-2-101 AND 53-
10 2-201, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 53-2-101, MCA, is amended to read:

15 **"53-2-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
16 apply:

17 (1) "Department" means the department of public health and human services provided for in Title 2,
18 chapter 15, part 22.

19 (2) "Identity information" means the full name, aliases, date of birth, address, social security number,
20 household composition, and other related information provided by an applicant for or recipient of public
21 assistance.

22 (2)(3) "Needy person" is ~~one~~ an individual who is eligible for public assistance under the laws of this
23 state.

24 (3)(4) "Protective services" means services to children and adults to be provided by the department
25 as permitted by Titles 41 and 53.

26 (4)(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
27 under this title to a person by a state or county agency, regardless of the original source of the assistance.

28 (5)(6) "Section 1115 waiver" means an experimental, pilot, research, or demonstration project, subject

1 to approval by the secretary of the U.S. department of health and human services, authorized by section 1115
2 of Title XI of the Social Security Act, 42 U.S.C. 1315, for which certain requirements of the Social Security Act
3 are waived.

4 ~~(6)(7)~~ "Section 1915 waiver" means a waiver of certain medicaid requirements, subject to approval by
5 the secretary of the U.S. department of health and human services under section 1915 of Title XIX of the Social
6 Security Act, 42 U.S.C. 1396n, for the purposes of managing health care through restrictions on access to
7 providers or for establishing programs of home and community-based services."

8
9 **NEW SECTION. Section 2. Establishment of enhanced eligibility verification system.** (1) The
10 department shall establish a computerized, ~~income, asset, and identity eligibility verification enhanced~~ system
11 in order to verify eligibility, ~~assess income and assets,~~ eliminate the duplication of assistance, and deter ~~errors,~~
12 ~~omissions,~~ waste, fraud, and abuse in ~~each public assistance program that the department administers the~~
13 ~~following programs:~~

- 14 ~~(a) the food assistance program provided for in Title 53, chapter 2, part 9;~~
- 15 ~~(b) the temporary assistance for needy families program provided for in Title 53, chapter 4, part 2;~~
- 16 ~~(c) the children's health insurance program provided for in Title 53, chapter 4, part 10;~~
- 17 ~~(d) medical assistance programs provided for in Title 53, chapter 6, that serve adults and for which~~
18 ~~the income eligibility standard is based solely on an applicant's modified adjusted gross income; and~~
- 19 ~~(e) the Montana Health and Economic Livelihood Partnership Act program provided for in Title 53,~~
20 ~~chapter 6, part 13.~~

21 (2) The department may enter into ~~a~~ competitively bid ~~contract~~ ~~contracts~~ with ~~a~~ third-party ~~vender~~
22 ~~vendors~~ for the purposes of developing a system by which to verify, as provided in [sections 3 and 4], the
23 income, asset, and identity information of applicants for public assistance to prevent ~~errors, omissions,~~ fraud,
24 misrepresentation, and inadequate documentation when determining an individual's eligibility ~~for public~~
25 ~~assistance:~~

- 26 (a) prior to the distribution of benefits;
- 27 (b) ~~quarterly at least every 6 months~~ after enrollment and between any eligibility redeterminations;
- 28 and

Amendment - 1st Reading - Requested by: Cary Smith

1 (c) during eligibility redeterminations and reviews.

2 (3) The department may contract with a vendor to provide information to facilitate reviews of recipient
3 eligibility conducted by the department.

4 (4) If the department enters into a contract with a third-party vendor for the purposes of carrying out
5 [sections 2 through 8]:

6 (a) the payment structure ~~must be based on a per-applicant rate and~~ may include a performance
7 bonus for achieving above a predetermined rate of success in identifying errors, omissions, waste, fraud, and
8 abuse; and

9 ~~(b) the vendor, in partnership with the department, must be required by the contract to establish~~
10 ~~annualized savings realized from implementation of the verification system. Savings must exceed the total~~
11 ~~yearly cost to the state of implementing the verification system~~

12 (b) the initial contract must be limited to 1 year. The department may enter into extended-length
13 contracts after the first year.

14 (5) If the department does not enter into a contract with a third-party vendor, the requirements of this
15 section must be carried out by the department.

16 (6) To avoid any conflict of interest, a primary third-party vendor with whom the department enters
17 into a contract may not bid on or be awarded a state contract to run enrollment eligibility determination services
18 for any of the programs specified in subsection (1).

19 (7) The department may continue to conduct any eligibility and identity verification processes that
20 were in practice before entry into a contract pursuant to this section.

21
22 **NEW SECTION. Section 3. Enhanced eligibility verification process.** (1) The department shall
23 process an application for ~~public assistance within 10 days or the minimum eligibility in a program specified in~~
24 [section 2] within the period required by federal law. ~~Prior to awarding assistance and on a quarterly basis in~~
25 initially determining eligibility and at least every 6 months after assistance is awarded, the department shall
26 ~~verify eligibility by checking the identity, to the extent practicable and if not cost prohibitive, determine the~~
27 following information ~~of as it relates to~~ each applicant for ~~and or~~ recipient of ~~public assistance against:~~

28 (a) earned and unearned income information maintained by the internal revenue service;

Amendment - 1st Reading - Requested by: Cary Smith

1 (b) employer weekly, monthly, and quarterly reports of income and unemployment insurance payment
2 information maintained by the Montana department of labor and industry and the Montana department of
3 revenue;

4 ~~(e)~~ employment information maintained by the Montana department of labor and industry;

5 ~~(d)~~(c) wage reporting and similar information maintained by states contiguous to this state;

6 ~~(e)~~(d) the following information maintained by the U.S. social security administration:

7 (i) earned income information;

8 (ii) death register information;

9 (iii) ~~prisoner~~ arrest and incarceration information;

10 (iv) beneficiary records and earnings information;

11 (v) earnings and pension information; and

12 (vi) supplemental security income information;

13 ~~(f)~~(e) the following information maintained by the U.S. department of health and human services:

14 (i) new hires, as maintained in the department's national directory of new hires;

15 (ii) income and employment information maintained for the purposes of child support enforcement; and

16 (iii) veterans' benefits information, in coordination with the Montana department of public health and

17 human services and the Montana department of military affairs, in the federal public assistance reporting

18 information system database;

19 ~~(g)~~(f) immigration status information maintained by the U.S. citizenship and immigration services;

20 ~~(h)~~(g) public housing and Section 8 housing assistance payment information maintained by the U.S.

21 department of housing and urban development;

22 ~~(i)~~(h) national fleeing felon information maintained by the federal bureau of investigation;

23 ~~(j)~~(i) the following information maintained by the department:

24 (i) child-care services information;

25 (ii) utility payments made under the low-income home energy assistance program;

26 (iii) emergency utility payment information; and

27 (iv) income and employment information for the purposes of child support enforcement pursuant to

28 Title 40, chapter 5;

Amendment - 1st Reading - Requested by: Cary Smith

1 ~~(k)(j)~~ a database of all persons who currently hold a license, permit, or certificate from any state
2 agency, the cost of which exceeds \$500;

3 ~~(k)(k)~~ earnings and pension information maintained by a retirement system provided for in Title 19;

4 ~~(m)(l)~~ any existing real-time database of persons currently receiving benefits in other states;

5 ~~(m)(m)~~ potential changes in residency as indicated by out-of-state electronic benefit transfer
6 transactions;

7 ~~(n)(n)~~ any available databases or lists of individuals with substantial lottery or gambling winnings,
8 including but not limited to information maintained by the Montana state agencies responsible for regulating
9 gambling and the state lottery; and

10 ~~(o)(o)~~ a database that is substantially similar to or a successor of a database listed in this section.

11 (2) As an alternative to using the verification sources provided for in subsections (1)(a) and (1)(b), the
12 department may use nonmodeled employment and income information from an external vendor in accordance
13 with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.

14 ~~(2)(3) Prior to awarding public assistance and on a quarterly basis after assistance is awarded In~~
15 ~~initially determining eligibility and at least every 6 months after eligibility is determined,~~ the department shall
16 match identity information of each applicant for and recipient of public assistance against, at minimum, the
17 following public records:

18 (a) a national public records data source of physical asset ownership, including but not limited to real
19 property, automobiles, watercraft, aircraft, luxury vehicles, and any other vehicle owned by the individual;

20 (b) a nationwide public records data source of incarcerated individuals;

21 (c) a nationwide best-address and driver's license data source to verify that the individual is a resident
22 of this state;

23 (d) a comprehensive public records database that identifies potential identity fraud or identity theft and
24 that can closely associate name, social security number, date of birth, phone, and address information;

25 (e) national and local financial institutions, in order to locate undisclosed depository accounts or verify
26 account balances of disclosed accounts;

27 (f) outstanding default or arrest warrant information maintained in criminal justice information systems;
28 and

1 (g) a database that is substantially similar to or a successor of a database listed in this section.

2

3 **NEW SECTION. Section 4. Enhanced identity ~~authentication verification~~ process. ~~Before~~**
4 ~~receiving public assistance, an applicant for assistance shall complete a computerized identity authentication~~
5 ~~process to confirm that the applicant owns the identity presented in the application. The department shall~~
6 ~~review the applicant's identity ownership by:~~

7 (1) ~~providing a knowledge-based quiz consisting of financial or personal questions. The quiz must~~
8 ~~attempt to accommodate nonbanked or underbanked applicants who do not have an established credit history.~~

9 (2) ~~providing for submission of the quiz through all channels, including online, in person, and by~~
10 ~~phone.~~

11 (1) The department shall verify the identity of individuals upon application for benefits provided through
12 a program specified in [section 2]. The department shall incorporate an enhanced identity verification process
13 that includes but is not limited to digital and physical identity authentication factors using data sources permitted
14 by federal and state law.

15 (2) The department shall ensure that identify verification processes for the programs exceed the
16 minimum standards required by the federal agency having funding authority for the program.

17

18 **NEW SECTION. Section 5. Discrepancies and case review.** ~~(1)~~ If a discrepancy is found between
19 the identity, income, or asset information provided by an applicant for or recipient of public assistance and one
20 or more of the databases or information tools listed under [section 3 or 4], the department shall review the case
21 as provided in this section in compliance with federal and state provisions governing adverse actions and
22 determinations.

23 (2) ~~If the department determines that no discrepancy exists or a change in circumstances has not~~
24 ~~affected the individual's eligibility for public assistance, the department shall take no further action.~~

25 (3) ~~If the department determines that the discrepancy or change in circumstances may affect a~~
26 ~~recipient's eligibility, the department shall redetermine eligibility within 10 business days.~~

27 (4) (a) ~~If the department determines that a discrepancy or change in circumstances may affect the~~
28 ~~eligibility of an applicant or recipient, the individual must be given an opportunity to explain the discrepancy or~~

1 ~~change in circumstances. The department shall provide written notice to the individual describing in sufficient~~
2 ~~detail the circumstances of the discrepancy or change, the manner in which the individual may respond, and~~
3 ~~the consequences of failing to take action.~~

4 ~~(b) The applicant or recipient has 10 business days, or the minimum required by state or federal law,~~
5 ~~to respond in an attempt to resolve the discrepancy or change in circumstances. The response must be~~
6 ~~provided in writing. After receiving the explanation, the department may request additional documentation if it~~
7 ~~determines that there is risk of fraud, misrepresentation, or inadequate documentation.~~

8 ~~(c) Self-declarations by an applicant or recipient may not be accepted as verification of categorical~~
9 ~~and financial eligibility during eligibility evaluations, reviews, and redeterminations under this subsection (4).~~

10 ~~(d) If the applicant or recipient does not respond to the notice, the department shall deny or~~
11 ~~discontinue assistance for failure to cooperate and shall provide notice of intent to deny or discontinue~~
12 ~~assistance. Eligibility for assistance may not be established or reestablished until the discrepancy or change~~
13 ~~has been resolved.~~

14 ~~(5) (a) If an applicant or recipient responds to the notice and disagrees with the findings of the match~~
15 ~~between the identity information and one or more databases or information tools listed under [section 3 or 4],~~
16 ~~the department shall reinvestigate the matter.~~

17 ~~(b) If the department finds that an error has occurred, the department shall take immediate action to~~
18 ~~correct it and may not take further action against the individual.~~

19 ~~(c) If the department determines that there is no error, the department shall determine the effect on~~
20 ~~the individual's case and take appropriate action. The department shall provide written notice of its action to the~~
21 ~~applicant or recipient.~~

22 ~~(6) (a) If the applicant or recipient agrees with the findings of the match between the identity~~
23 ~~information and one or more databases or information tools listed under [section 3 or 4], the department shall~~
24 ~~determine the effect on the individual's case and take appropriate action. The department shall provide written~~
25 ~~notice of its action to the applicant or recipient.~~

26 ~~(b) The department may not discontinue assistance upon finding a discrepancy or change in~~
27 ~~circumstances between an individual's identity information and one or more databases or information tools~~
28 ~~listed under [section 3 or 4] until the department has notified the individual and provided an opportunity to~~

1 ~~respond as required under this section.~~

2

3 NEW SECTION. Section 6. Referrals for fraud, intentional misrepresentation, or inadequate
4 misleading documentation. (1) After reviewing changes or discrepancies that may affect eligibility for ~~public~~
5 ~~assistance the programs specified in [section 2],~~ the department shall act on the reviews by:

6 (a) removing from a ~~public assistance~~ program any individual found to be ineligible according to
7 eligibility criteria and regulations for the program;

8 (b) referring suspected cases of fraud or intentional misrepresentation to the department of justice as
9 provided in Title 53, chapter 2, part 5, or to any other appropriate entity for investigation and possible criminal
10 prosecution, recovery of improper payments, and collection of civil penalties; and

11 ~~(c) referring suspected cases of identity fraud to the department of justice or to any other appropriate~~
12 ~~entity for investigation and possible criminal prosecution; and~~

13 ~~(d)(c)~~ referring determinations of ~~ineligibility and~~ suspected cases of fraud, intentional
14 ~~misrepresentation, or inadequate misleading~~ documentation to other state agencies as appropriate for review
15 of eligibility discrepancies in other public programs.

16 (2) If an applicant for or recipient of ~~public~~ assistance is convicted of fraud related to public assistance
17 benefits, the department shall exercise all legal options to remove the applicant or recipient from other public
18 programs and garnish wages or state income tax refunds until the state recovers an amount equal to the
19 benefits fraudulently received.

20
21 NEW SECTION. Section 7. Transparency in medicaid. The department shall electronically release
22 to the public the following data on providers participating in the medicaid program provided for in Title 53,
23 chapter 6, part 1:

- 24 (1) the type of service provided, based on the current medical coding system in use;
- 25 (2) whether the service was provided in an office setting, ~~or a facility,~~ or other location;
- 26 (3) the number of services provided;
- 27 (4) the average submitted charges and average allowed amount for each service;
- 28 (5) the average medicaid payment for each service; and

1 (6) a count of unique ~~beneficiaries treated~~ medicaid members served.

2

3 NEW SECTION. Section 8. Reporting requirements. ~~The~~ No later than December 31, 2023, and
4 annually after the initial report is made, the department shall provide a written report to the ~~governor office of~~
5 budget and program planning, to the legislature in accordance with 5-11-210, and to the legislative ~~auditor~~
6 finance committee and the children, families, health, and human services interim committee detailing: ~~the~~
7 ~~effectiveness and general findings of the eligibility verification system, including but not limited to the number of~~
8 ~~cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of~~
9 ~~improper payments, collection of civil penalties, the savings that have resulted from the system, and the~~
10 ~~outcomes of cases referred to the department of justice, a county attorney's office, or another state agency~~

11 (1) the implementation status of the enhanced eligibility verification system and enhanced identity
12 verification process;

13 (2) the overall effectiveness, general findings, and estimated savings of the enhanced eligibility
14 verification system and enhanced identity verification process;

15 (3) the status and outcome of cases reported to law enforcement organizations, including the
16 department of justice; and

17 (4) for each program specified in [section 2], the:

18 (a) number of case discrepancies identified;

19 (b) number of case discrepancies reviewed;

20 (c) number of requests for additional information notices issued;

21 (d) number and type of case discrepancy resolutions;

22 (e) number and types of requests for additional information resolutions;

23 (f) number of referrals for criminal prosecution; and

24 (g) overpayments established and collected. ~~The report must be provided:~~

25 ~~(1) 6 months following implementation of [sections 2 through 8]; and~~

26 ~~(2) every 3 months after the initial report is made.~~

27

28 **Section 9.** Section 53-2-201, MCA, is amended to read:

1 **"53-2-201. Powers and duties of department.** (1) The department shall:

2 (a) administer and supervise public assistance, including the provision of food stamps, food
3 commodities, cash assistance and nonfinancial assistance, as defined in 53-2-902, energy assistance,
4 weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability
5 services, medical care payments in behalf of recipients of public assistance, employment and training services
6 for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

7 (b) give consultant service to private institutions providing care for adults who are needy, indigent, or
8 dependent or who have disabilities;

9 (c) cooperate with other state agencies and develop provisions for services to the blind, including the
10 prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational
11 guidance and training of the blind;

12 (d) organize and supervise the local offices of public assistance in an efficient and economical
13 manner;

14 (e) assist and cooperate with other state and federal departments, bureaus, agencies, and
15 institutions, when requested, by performing services in conformity with public assistance purposes;

16 (f) administer all state and federal funds allocated to the department for public assistance and do all
17 things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance
18 purposes;

19 (g) make rules governing payment for services and supplies provided to recipients of public
20 assistance; and

21 (h) adopt rules regarding assignment of monetary and medical support upon application for cash
22 assistance, as defined in 53-2-902, and related medical assistance.

23 (2) The department may:

24 (a) purchase, exchange, condemn, as provided in Title 70, chapter 30, or receive by gift either real or
25 personal property that is necessary to carry out its public assistance functions. Title to property obtained under
26 this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

27 (b) contract with the federal government to carry out its public assistance functions and comply with
28 requirements for receiving federal aid and assistance; ~~and~~

1 (c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of
2 services to be provided to recipients of public assistance; and

3 (d) make rules to carry out the provisions of [sections 2 through 8]."
4

5 NEW SECTION. Section 10. Codification instruction. [Sections 2 through 8] are intended to be
6 codified as an integral part of Title 53, chapter 2, part 1, and the provisions of Title 53, chapter 2, part 1, apply
7 to [sections 2 through 8].
8

9 COORDINATION SECTION. Section 11. Coordination instruction. If either House Bill No. 235 or
10 House Bill No. 339, or both, and [this act] are passed and approved, then the reference in [this act] to the "the
11 food assistance program provided for in Title 53, chapter 2, part 9" in [section 2(1)(a)] must be changed to "the
12 supplemental nutrition assistance program provided for in Title 53, chapter 2, part 9".
13

14 NEW SECTION. Section 12. {standard} Saving clause. [This act] does not affect rights and duties
15 that matured before [the effective date of this act].
16

17 NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
19 the part remains in effect in all valid applications that are severable from the invalid applications.
20

21 NEW SECTION. Section 14. Contingent voidness. (1) If a federal agency having granting authority
22 over the program notifies the department of public health and human services that a provision of [this act] does
23 not comply with federal law or regulations, then that provision is void.

24 (2) The department of public health and human services shall notify the code commissioner of any
25 occurrence of the contingency and the provisions of [this act] to which the contingency applies.
26

- END -