

1 HOUSE BILL NO. 37

2 INTRODUCED BY T. WELCH

3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING REQUIREMENTS FOR THE MEDICALLY NEEDY
6 MEDICAID PROGRAM; ESTABLISHING THAT ELIGIBLE INDIVIDUALS MAY NOT BE REQUIRED TO
7 QUALIFY THROUGH ONLY ONE METHOD FOR THE PROGRAM; CLARIFYING THAT MEDICAL
8 EXPENSES FOR HOME AND COMMUNITY-BASED SERVICES WAIVER PARTICIPANTS MUST BE
9 COUNTED IN THE SAME MANNER AS MEDICAL EXPENSES FOR OTHER MEDICALLY NEEDY
10 INDIVIDUALS; AMENDING SECTIONS 53-4-1110, 53-6-113, AND 53-6-131, MCA; AND PROVIDING AN
11 EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14
15 **Section 1.** Section 53-4-1110, MCA, is amended to read:

16 **"53-4-1110. (Temporary) Exemption from resource test.** An otherwise applicable eligibility
17 resource test provided for in 53-6-113(6) and 53-6-131(~~8~~)(9) does not apply to plan applicants. (Terminates
18 June 30, 2025, on occurrence of contingency--sec. 48, Ch. 415, L. 2019.)

19 **53-4-1110. (Effective on occurrence of contingency) Exemption from resource test.** An
20 otherwise applicable eligibility resource test provided for in 53-6-113(6) and 53-6-131(~~7~~)(8) does not apply to
21 plan applicants."

22
23 **Section 2.** Section 53-6-113, MCA, is amended to read:

24 **"53-6-113. Department to adopt rules.** (1) The department shall adopt appropriate rules necessary
25 for the administration of the Montana medicaid program as provided for in this part and that may be required by
26 federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act,
27 42 U.S.C. 1396, et seq., as amended.

28 (2) The department shall adopt rules that are necessary to further define for the purposes of this part

1 the services provided under 53-6-101 and to provide that services being used are medically necessary and that
2 the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and
3 duration of services provided under the Montana medicaid program, including the items and components
4 constituting the services.

5 (3) The department shall establish by rule the rates for reimbursement of services provided under this
6 part. The department may in its discretion set rates of reimbursement that it determines necessary for the
7 purposes of the program. In establishing rates of reimbursement, the department may consider but is not
8 limited to considering:

9 (a) the availability of appropriated funds;

10 (b) the actual cost of services;

11 (c) the quality of services;

12 (d) the professional knowledge and skills necessary for the delivery of services; and

13 (e) the availability of services.

14 (4) The department shall specify by rule those professionals who may deliver or direct the delivery of
15 particular services.

16 (5) The department may provide by rule for payment by a recipient of a portion of the reimbursements
17 established by the department for services provided under this part.

18 (6) (a) The department may adopt rules consistent with this part to govern eligibility for the Montana
19 medicaid program, including the medicaid program provided for in 53-6-195. Rules may include but are not
20 limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial
21 criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant
22 and recipient information, and cooperation with the state agency administering the child support enforcement
23 program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

24 (b) The department may not apply financial criteria below \$15,000 for resources other than income in
25 determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage
26 groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).

27 (c) The department may not apply financial criteria below \$15,000 for an individual and \$30,000 for a
28 couple for resources other than income in determining the eligibility of individuals for the medicaid program for

1 workers with disabilities provided for in 53-6-195.

2 (d) (i) The department may not adopt rules or policies requiring a person who is eligible for medicaid
3 pursuant to 53-6-131(1)(e)(ii)(A) to:

4 (A) make only a cash payment to qualify for medicaid under that subsection; or

5 (B) only incur medical expenses as a means of qualifying for medicaid under that subsection.

6 (ii) If a person eligible for medicaid under 53-6-131(1)(e)(ii)(A) is participating in a home and
7 community-based services waiver, the department shall count as an eligible medical expense any medical
8 service or item that a nonwaiver medicaid member is allowed to count as a medical expense to qualify for
9 medicaid under 53-6-131(1)(e)(ii)(A).

10 (III) NOTHING IN THIS SUBSECTION (6)(D) MAY BE CONSTRUED AS PREVENTING A PERSON FROM MAKING ONLY A
11 CASH PAYMENT TO QUALIFY FOR MEDICAID PURSUANT TO 53-6-131(1)(E)(II)(A).

12 (7) The department may adopt rules limiting eligibility based on criteria more restrictive than that
13 provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be
14 amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

15 (8) The department may adopt rules necessary for the administration of medicaid managed care
16 systems. Rules to be adopted may include but are not limited to rules concerning:

17 (a) participation in managed care;

18 (b) selection and qualifications for providers of managed care; and

19 (c) standards for the provision of managed care.

20 (9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for
21 extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who
22 lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the
23 department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended
24 medical assistance will be provided. The department, in exercising its discretion to set income limits and
25 duration of assistance, may consider the amount of funds appropriated by the legislature.

26 (10) Unless required by federal law or regulation, the department may not adopt rules that exclude a
27 child from medicaid services or require prior authorization for a child to access medicaid services if the child
28 would be eligible for or able to access the services without prior authorization if the child was not in foster care."

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Section 3. Section 53-6-131, MCA, is amended to read:

"53-6-131. (Temporary) Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a U.S. citizen or a qualified alien as defined in 8 U.S.C. 1641 who is determined by the department of public health and human services to be a Montana resident and, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is:

(i) under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs; or

(ii) under 18 years of age and is in a guardianship subsidized by the department pursuant to 41-3-444.

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

1 (B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the
2 person is aged, blind, or disabled, has resources that do not exceed the resource standards of the federal
3 supplemental security income program; or

4 (II) in the case of a person who meets the nonfinancial criteria for medical assistance because the
5 person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not
6 exceed the resource standards adopted by the department.

7 (f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).

8 (g) The person is under 19 years of age and lives with a family having a combined income that does
9 not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent
10 necessary to maximize federal matching funds provided for in 53-4-1104.

11 (2) The department shall require an applicant to provide proof of the applicant's residency in this
12 state.

13 (3) (a) The department may establish income and resource limitations. Limitations of income and
14 resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise
15 applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy
16 Montana kids plan provided for in 53-4-1104.

17 (b) The department may not count as a resource an individual retirement account that was
18 established by a person participating in the medicaid program for workers with disabilities provided for in 53-6-
19 195 if:

20 (i) the person is no longer eligible for coverage under 53-6-195; and

21 (ii) the individual retirement account was established during the time the person was receiving benefits
22 through the medicaid program for workers with disabilities.

23 (4) (a) The department may not require a person who is eligible for medicaid under subsection
24 (1)(e)(ii)(A) to:

25 (i) make only a cash payment to qualify for medicaid under that subsection; or

26 (ii) only incur medical expenses as a means of qualifying for medicaid under that subsection.

27 (b) If a person eligible for medicaid under subsection (1)(e)(ii)(A) is participating in a home and
28 community-based services waiver, the department shall count as an eligible medical expense any medical

1 service or item that a nonwaiver medicaid applicant is allowed to count as a medical expense to qualify for
 2 medicaid under subsection (1)(e)(ii)(A).

3 (C) NOTHING IN THIS SUBSECTION (4) MAY BE CONSTRUED AS PREVENTING A PERSON FROM MAKING ONLY A
 4 CASH PAYMENT TO QUALIFY FOR MEDICAID PURSUANT TO SUBSECTION (1)(E)(II)(A).

5 ~~(4)~~(5) The Montana medicaid program shall pay, as required by federal law, the premiums necessary
 6 for medicaid-eligible persons participating in the medicare program and may, within the discretion of the
 7 department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified
 8 medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of
 9 the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

10 (a) has income that does not exceed income standards as may be required by the Social Security
 11 Act; and

12 (b) has resources that do not exceed standards that the department determines reasonable for
 13 purposes of the program.

14 ~~(5)~~(6) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance,
 15 and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

16 ~~(6)~~(7) In accordance with waivers of federal law that are granted by the secretary of the U.S.
 17 department of health and human services, the department of public health and human services may grant
 18 eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid
 19 benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931
 20 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social
 21 Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as
 22 provided in 53-6-101.

23 ~~(7)~~(8) The department, under the Montana medicaid program, may provide, if a waiver is not available
 24 from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act,
 25 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons
 26 that may be designated by the act for receipt of assistance.

27 ~~(8)~~(9) Notwithstanding any other provision of this chapter, medical assistance must be provided to
 28 infants and pregnant women whose family income does not exceed income standards adopted by the

1 department that comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i) and whose family resources do not
2 exceed standards that the department determines reasonable for purposes of the program.

3 ~~(9)~~(10) Subject to appropriations, the department may cooperate with and make grants to a nonprofit
4 corporation that uses donated funds to provide basic preventive and primary health care medical benefits to
5 children whose families are ineligible for the Montana medicaid program and who are ineligible for any other
6 health care coverage, are under 19 years of age, and are enrolled in school if of school age.

7 ~~(10)~~(11) A person described in subsection ~~(8)~~ (9) must be provided continuous eligibility for medical
8 assistance, as authorized in 42 U.S.C. 1396a(e)(5) through (e)(7).

9 ~~(11)~~(12) Full medical assistance under the Montana medicaid program may be granted to an individual
10 during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a
11 precancerous condition of the breast or cervix, if the individual:

12 (a) has been screened for breast and cervical cancer under the Montana breast and cervical health
13 program funded by the centers for disease control and prevention program established under Title XV of the
14 Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

15 (b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or
16 cervix;

17 (c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

18 (d) is not eligible for medical assistance under any mandatory categorically needy eligibility group;

19 and

20 (e) has not attained 65 years of age.

21 ~~(12)~~(13) Subject to the limitation in 53-6-195, the department shall provide medicaid coverage to
22 workers with disabilities as provided in 53-6-195 and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and
23 (r)(2) and 42 U.S.C. 1396o.

24 ~~(13)~~(14) Nothing in subsection (1) may be construed as allowing the department to deny enrollment for
25 a reason that is impermissible under federal law or regulation. (Terminates June 30, 2025, on occurrence of
26 contingency--sec. 48, Ch. 415, L. 2019.)

27 **53-6-131. (Effective on occurrence of contingency) Eligibility requirements.** (1) Medical
28 assistance under the Montana medicaid program may be granted to a person who is determined by the

1 department of public health and human services, in its discretion, to be eligible as follows:

2 (a) The person receives or is considered to be receiving supplemental security income benefits under
3 Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess
4 of the applicable medical assistance limits.

5 (b) The person would be eligible for assistance under the program described in subsection (1)(a) if
6 that person were to apply for that assistance.

7 (c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility,
8 the person would be receiving assistance under the program in subsection (1)(a).

9 (d) The person is:

10 (i) under 21 years of age and in foster care under the supervision of the state or was in foster care
11 under the supervision of the state and has been adopted as a child with special needs; or

12 (ii) under 18 years of age and is in a guardianship subsidized by the department pursuant to 41-3-444.

13 (e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d)
14 and:

15 (i) the person's income does not exceed the income level specified for federally aided categories of
16 assistance and the person's resources are within the resource standards of the federal supplemental security
17 income program; or

18 (ii) the person, while having income greater than the medically needy income level specified for
19 federally aided categories of assistance:

20 (A) has an adjusted income level, after incurring medical expenses, that does not exceed the
21 medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in
22 cash to the department the amount by which the person's income exceeds the medically needy income level
23 specified for federally aided categories of assistance; and

24 (B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the
25 person is aged, blind, or disabled, has resources that do not exceed the resource standards of the federal
26 supplemental security income program; or

27 (II) in the case of a person who meets the nonfinancial criteria for medical assistance because the
28 person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not

1 exceed the resource standards adopted by the department.

2 (f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).

3 (g) The person is under 19 years of age and lives with a family having a combined income that does
4 not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent
5 necessary to maximize federal matching funds provided for in 53-4-1104.

6 (2) (a) The department may establish income and resource limitations. Limitations of income and
7 resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise
8 applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy
9 Montana kids plan provided for in 53-4-1104.

10 (b) The department may not count as a resource an individual retirement account that was
11 established by a person participating in the medicaid program for workers with disabilities provided for in 53-6-
12 195 if:

13 (i) the person is no longer eligible for coverage under 53-6-195; and

14 (ii) the individual retirement account was established during the time the person was receiving benefits
15 through the medicaid program for workers with disabilities.

16 (3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for
17 medicaid-eligible persons participating in the medicare program and may, within the discretion of the
18 department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified
19 medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of
20 the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

21 (a) has income that does not exceed income standards as may be required by the Social Security
22 Act; and

23 (b) has resources that do not exceed standards that the department determines reasonable for
24 purposes of the program.

25 (4) (a) The department may not require a person who is eligible for medicaid under subsection
26 (1)(e)(ii)(A) to:

27 (i) make only a cash payment to qualify for medicaid under that subsection; or

28 (ii) only incur medical expenses as a means of qualifying for medicaid under that subsection.

1 **(b)** If a person eligible for medicaid under subsection (1)(e)(ii)(A) is participating in a home and
 2 community-based services waiver, the department shall count as an eligible medical expense any medical
 3 service or item that a nonwaiver medicaid applicant is allowed to count as a medical expense to qualify for
 4 medicaid under subsection (1)(e)(ii)(A).

5 **(C)** NOTHING IN THIS SUBSECTION (4) MAY BE CONSTRUED AS PREVENTING A PERSON FROM MAKING ONLY A
 6 CASH PAYMENT TO QUALIFY FOR MEDICAID PURSUANT TO SUBSECTION (1)(E)(II)(A).

7 ~~(4)~~**(5)** The department may pay a medicaid-eligible person's expenses for premiums, coinsurance,
 8 and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

9 ~~(5)~~**(6)** In accordance with waivers of federal law that are granted by the secretary of the U.S.
 10 department of health and human services, the department of public health and human services may grant
 11 eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid
 12 benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931
 13 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social
 14 Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as
 15 provided in 53-6-101.

16 ~~(6)~~**(7)** The department, under the Montana medicaid program, may provide, if a waiver is not available
 17 from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act,
 18 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons
 19 that may be designated by the act for receipt of assistance.

20 ~~(7)~~**(8)** Notwithstanding any other provision of this chapter, medical assistance must be provided to
 21 infants and pregnant women whose family income does not exceed income standards adopted by the
 22 department that comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i) and whose family resources do not
 23 exceed standards that the department determines reasonable for purposes of the program.

24 ~~(8)~~**(9)** Subject to appropriations, the department may cooperate with and make grants to a nonprofit
 25 corporation that uses donated funds to provide basic preventive and primary health care medical benefits to
 26 children whose families are ineligible for the Montana medicaid program and who are ineligible for any other
 27 health care coverage, are under 19 years of age, and are enrolled in school if of school age.

28 ~~(9)~~**(10)** A person described in subsection ~~(7)~~ **(8)** must be provided continuous eligibility for medical

1 assistance, as authorized in 42 U.S.C. 1396a(e)(5) through (e)(7).

2 ~~(10)(11)~~ Full medical assistance under the Montana medicaid program may be granted to an individual
3 during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a
4 precancerous condition of the breast or cervix, if the individual:

5 (a) has been screened for breast and cervical cancer under the Montana breast and cervical health
6 program funded by the centers for disease control and prevention program established under Title XV of the
7 Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

8 (b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or
9 cervix;

10 (c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

11 (d) is not eligible for medical assistance under any mandatory categorically needy eligibility group;

12 and

13 (e) has not attained 65 years of age.

14 ~~(11)(12)~~ Subject to the limitation in 53-6-195, the department shall provide medicaid coverage to
15 workers with disabilities as provided in 53-6-195 and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and
16 (r)(2) and 42 U.S.C. 1396o."

17

18 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2021.

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- END -