

## 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; PROVIDING FOR A~~  
 12 ~~MAXIMUM FAMILY COPAYMENT; PROVIDING DIRECTION TO THE DEPARTMENT OF PUBLIC HEALTH~~  
 13 ~~AND HUMAN SERVICES; PLACING RESTRICTIONS ON THE USE OF MEDICAID FUNDS FOR STAYS AT~~  
 14 ~~THE STATE HOSPITAL; AMENDING SECTION SECTIONS 50-46-345, 53-4-1008, 53-6-101, AND 53-6-1304,~~  
 15 ~~MCA; REPEALING SECTION 50-46-346, MCA; AND PROVIDING AN EFFECTIVE DATE, A TERMINATION~~  
 16 ~~DATE, AND A CONTINGENT TERMINATION DATE.~~"

17

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

19

20 ~~NEW SECTION. Section 1. Notification to legislative committees prior to action.~~ (1) Prior to  
 21 ~~enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department of public~~  
 22 ~~health and human services shall report this information to the following committees:~~

23 (a) ~~the children, families, health, and human services interim committee; and~~24 (b) ~~the legislative finance committee.~~

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

27

28 ~~NEW SECTION. Section 2. Transfer of Boulder campus -- contingent appropriation.~~ (1) The

1 department of public health and human services and the department of justice may enter into a memorandum  
 2 of understanding to transfer the Boulder campus from the department of public health and human services to  
 3 the department of justice for use by the Montana highway patrol.

4 ~~(2) The transfer may include the behavioral health facility located in Boulder.~~

5 ~~(3) The transfer must be completed by December 31, 2021.~~

6 ~~(4) If the Boulder campus is transferred to the department of justice by December 31, 2021, there is~~  
 7 ~~appropriated \$500,000 from the general fund to the department of justice in each year of the biennium~~  
 8 ~~beginning July 1, 2021.~~

9

10 **Section 1.** Section 50-46-345, MCA, is amended to read:

11 **"50-46-345. Medical marijuana state special revenue account -- operating reserve -- transfer of**  
 12 **excess funds.** (1) There is a medical marijuana state special revenue account within the state special revenue  
 13 fund established in 17-2-102.

14 (2) The account consists of:

15 (a) money deposited into the account pursuant to 50-46-344 and 50-46-347;

16 (b) the tax collected pursuant to Title 15, chapter 64, part 1; and

17 (c) civil penalties collected under this part.

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

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

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

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

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

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

1 fund."

2

3 NEW SECTION. SECTION 2. LEGISLATIVE INTENT. IF, DURING THE 2023 BIENNIUM, EXPENDITURES IN THE  
 4 DISABILITIES AND EMPLOYMENT TRANSITION DIVISION, THE DEVELOPMENTAL SERVICES DIVISION, THE HEALTH  
 5 RESOURCES DIVISION, THE SENIOR AND LONG TERM CARE DIVISION, THE ADDICTIVE AND MENTAL DISORDERS DIVISION,  
 6 OR THE CHILD AND FAMILY SERVICES DIVISION ARE ESTIMATED TO EXCEED APPROPRIATIONS, THEREBY REQUIRING  
 7 ACTIONS UNDER 17-7-301, IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF PUBLIC HEALTH AND  
 8 HUMAN SERVICES MAY, WITH PRIOR APPROVAL OF THE OFFICE OF BUDGET AND PROGRAM PLANNING, TRANSFER BUDGET  
 9 AUTHORITY FROM ANY DIVISION IN THE DEPARTMENT TO ANY OTHER DIVISION LISTED ABOVE TO ELIMINATE A POTENTIAL  
 10 DEFICIT OR SUPPLEMENTAL REQUEST AND ELIMINATE THE NEED FOR ACTIONS UNDER 17-7-301. TOTAL TRANSFERS TO A  
 11 DIVISION MAY NOT EXCEED 10% OF THE BUDGET OF THE DIVISION RECEIVING THE TRANSFER. SUCH TRANSFERS  
 12 BETWEEN DIVISIONS MUST BE REPORTED BY THE DEPARTMENT TO THE LEGISLATIVE FINANCE COMMITTEE AT ITS NEXT  
 13 REGULAR MEETING. FOR THE 2023 BIENNIUM, THIS LANGUAGE SUPERSEDES LANGUAGE CONTAINED IN HOUSE BILL NO.  
 14 341 AND HOUSE BILL NO. 275, IF PASSED AND APPROVED.

15

16 SECTION 3. SECTION 53-4-1008, MCA, IS AMENDED TO READ:

17 **"53-4-1008. (Temporary) Participant cost sharing. (1)** The department of public health and human  
 18 services may charge fees to participants in the program. The fees may include:

19 ~~(1)(a)~~ monthly or yearly enrollment fees;

20 ~~(2)(b)~~ minimum charges to be incurred or spent before benefits are paid;

21 ~~(3)(c)~~ cost sharing for individual benefits; and

22 ~~(4)(d)~~ other types of charges assessed as part of the program.

23 (2) Beginning January 1, 2022, the maximum family copayment for the benefit year must be set at  
 24 \$500. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999.)"

25

26 NEW SECTION. SECTION 4. DIRECTION TO DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES --  
 27 NOTIFICATION TO LEGISLATURE. IF IMPLEMENTATION OF [SECTION 3] WOULD RESULT IN A REDUCTION IN THE FEDERAL  
 28 MEDICAL ASSISTANCE PERCENTAGES FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM OR THE MEDICAID PROGRAM

1 OR OTHERWISE RESULT IN A LOSS OF FUNDING FOR EITHER OR BOTH PROGRAMS, THE LEGISLATURE DIRECTS THE  
 2 DEPARTMENT TO DELAY THE IMPLEMENTATION OF THOSE PROVISIONS UNTIL IMPLEMENTATION CAN OCCUR WITHOUT A  
 3 REDUCTION IN A FEDERAL MEDICAL ASSISTANCE PERCENTAGE OR OTHER LOSS OF FEDERAL FUNDING.

4

5 **SECTION 5. SECTION 53-6-101, MCA, IS AMENDED TO READ:**

6 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana  
 7 medicaid program established for the purpose of providing necessary medical services to eligible persons who  
 8 have need for medical assistance. The Montana medicaid program is a joint federal-state program administered  
 9 under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The  
 10 department shall administer the Montana medicaid program.

11 (2) The department and the legislature shall consider the following funding principles when  
 12 considering changes in medicaid policy that either increase or reduce services:

13 (a) protecting those persons who are most vulnerable and most in need, as defined by a combination  
 14 of economic, social, and medical circumstances;

15 (b) giving preference to the elimination or restoration of an entire medicaid program or service, rather  
 16 than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

17 (c) giving priority to services that employ the science of prevention to reduce disability and illness,  
 18 services that treat life-threatening conditions, and services that support independent or assisted living, including  
 19 pain management, to reduce the need for acute inpatient or residential care.

20 (3) Medical assistance provided by the Montana medicaid program includes the following services:

21 (a) inpatient hospital services;

22 (b) outpatient hospital services;

23 (c) other laboratory and x-ray services, including minimum mammography examination as defined in  
 24 33-22-132;

25 (d) skilled nursing services in long-term care facilities;

26 (e) physicians' services;

27 (f) nurse specialist services;

28 (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age,

1 in accordance with federal regulations and subsection (10)(b);

2 (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided  
3 in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

4 (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant  
5 women;

6 (j) services that are provided by physician assistants within the scope of their practice and that are  
7 otherwise directly reimbursed as allowed under department rule to an existing provider;

8 (k) health services provided under a physician's orders by a public health department;

9 (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

10 (m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as  
11 provided in 33-22-153;

12 (n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103; and

13 (o) services provided by a person certified in accordance with 37-2-318 to provide services in  
14 accordance with the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.

15 (4) Medical assistance provided by the Montana medicaid program may, as provided by department  
16 rule, also include the following services:

17 (a) medical care or any other type of remedial care recognized under state law, furnished by licensed  
18 practitioners within the scope of their practice as defined by state law;

19 (b) home health care services;

20 (c) private-duty nursing services;

21 (d) dental services;

22 (e) physical therapy services;

23 (f) mental health center services administered and funded under a state mental health program  
24 authorized under Title 53, chapter 21, part 10;

25 (g) clinical social worker services;

26 (h) prescribed drugs, dentures, and prosthetic devices;

27 (i) prescribed eyeglasses;

28 (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

- 1 (k) inpatient psychiatric hospital services for persons under 21 years of age;
- 2 (l) services of professional counselors licensed under Title 37, chapter 23;
- 3 (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- 4 (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted  
5 case management services for the mentally ill;
- 6 (o) services of psychologists licensed under Title 37, chapter 17;
- 7 (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C.  
8 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;
- 9 (q) services of behavioral health peer support specialists certified under Title 37, chapter 38, provided  
10 to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and
- 11 (r) any additional medical service or aid allowable under or provided by the federal Social Security  
12 Act.
- 13 (5) Services for persons qualifying for medicaid under the medically needy category of assistance, as  
14 described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others  
15 qualifying for assistance under the Montana medicaid program. The department is not required to provide all of  
16 the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy  
17 category of assistance.
- 18 (6) In accordance with federal law or waivers of federal law that are granted by the secretary of the  
19 U.S. department of health and human services, the department may implement limited medicaid benefits, to be  
20 known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as  
21 defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of  
22 medical assistance only who are covered under a group related to a program providing cash assistance, as  
23 defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may  
24 include those optional services listed in subsections (4)(a) through (4)(r) that the department in its discretion  
25 specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated  
26 by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a  
27 particular service is commonly covered by private health insurance plans. However, a recipient who is  
28 pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or

1 is less than 21 years of age is entitled to full medicaid coverage.

2 (7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C.  
3 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles,  
4 and coinsurance for persons not otherwise eligible for medicaid.

5 (8) (a) The department may set rates for medical and other services provided to recipients of  
6 medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

7 (b) The department shall strive to close gaps in services provided to individuals suffering from mental  
8 illness and co-occurring disorders by doing the following:

9 (i) simplifying administrative rules, payment methods, and contracting processes for providing  
10 services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be  
11 cost-neutral for the biennium beginning July 1, 2017.

12 (ii) publishing a report on an annual basis that describes the process that a mental health center or  
13 chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment  
14 from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

15 (9) The services provided under this part may be only those that are medically necessary and that are  
16 the most efficient and cost-effective.

17 (10) (a) The amount, scope, and duration of services provided under this part must be determined by  
18 the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be  
19 amended.

20 (b) The department shall, with reasonable promptness, provide access to all medically necessary  
21 services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access  
22 to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

23 (11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

24 (12) (a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the  
25 department shall report the information to:

26 (i) the children, families, health, and human services interim committee; and

27 (ii) the legislative finance committee.

28 (b) In its report to the committees, the department shall provide an explanation for the proposed

1 changes and an estimated budget impact to the department over the next 4 fiscal years.

2 ~~(12)(13)~~ If available funds are not sufficient to provide medical assistance for all eligible persons, the  
 3 department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical  
 4 services made available under the Montana medicaid program after taking into consideration the funding  
 5 principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L.  
 6 2019.)"

7  
 8 **NEW SECTION. SECTION 6. MEDICAID -- RESTRICTION ON USE OF FUNDS TO PAY FOR STAYS AT STATE**  
 9 **HOSPITAL. MEDICAID FUNDS APPROPRIATED IN HOUSE BILL NO. 2 TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN**  
 10 **SERVICES MAY NOT BE USED TO REIMBURSE THE COSTS OF A PATIENT'S STAY AT THE MONTANA STATE HOSPITAL UNLESS**  
 11 **THE PERSON IS UNDER 21 YEARS OF AGE OR 65 YEARS OF AGE OR OLDER, CONSISTENT WITH THE INSTITUTIONS FOR**  
 12 **MENTAL DISEASE EXCLUSION IN SECTION 1905 OF THE SOCIAL SECURITY ACT.**

13

14 **SECTION 7. SECTION 53-6-1304, MCA, IS AMENDED TO READ:**

15 **"53-6-1304. (Temporary) Montana HELP Act program -- eligibility for coverage of health care**  
 16 **services -- exceptions.** (1) An individual is eligible for coverage of health care services provided pursuant to  
 17 this part if the individual meets the requirements of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

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

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

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

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

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



- 1 (d) are exempt under the waiver implementing this part as of July 1, 2019; or  
 2 (e) are otherwise exempt under federal law. (Terminates June 30, 2025--secs. 38, 48, Ch. 415, L.  
 3 2019.)"

4  
 5 **NEW SECTION. Section 8. Repealer.** The following section of the Montana Code Annotated is  
 6 repealed:

7 50-46-346. Pain management education and treatment special revenue account.

8  
 9 **NEW SECTION. SECTION 9. DIRECTION TO DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES. (1)**

10 THE LEGISLATURE AUTHORIZES THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REVISE, IF NECESSARY,  
 11 THE PENDING SECTION 1115 MEDICAID DEMONSTRATION AMENDMENT AND EXTENSION APPLICATION TITLED "MONTANA  
 12 HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP (HELP) DEMONSTRATION PROGRAM" (PROJECT NUMBER 11-W-  
 13 00300/8) TO ELIMINATE THE REQUEST FOR APPROVAL OF 12-MONTH CONTINUOUS ELIGIBILITY FOR THE MEDICAID  
 14 EXPANSION POPULATION.

15 (2) IF IMPLEMENTATION OF [SECTION 7] WOULD RESULT IN A REDUCTION IN THE ENHANCED FEDERAL MEDICAL  
 16 ASSISTANCE PERCENTAGE PROVIDED FOR THE MEDICAID PROGRAM UNDER THE FAMILIES FIRST CORONAVIRUS  
 17 RESPONSE ACT OF 2020, THE LEGISLATURE DIRECTS THE DEPARTMENT TO DELAY THE IMPLEMENTATION OF THOSE  
 18 PROVISIONS UNTIL IMPLEMENTATION CAN OCCUR WITHOUT A REDUCTION IN THE ENHANCED FEDERAL MEDICAL  
 19 ASSISTANCE PERCENTAGE.

20  
 21 **COORDINATION SECTION. Section 10. Coordination instruction.** If both [this act] and House Bill  
 22 No. 497 are passed and approved, [section 4 5(12) OF THIS ACT] must read:

23 ~~"Section 1. Notification to legislative committees prior to action. (1)-(12) (A)~~ Prior to enacting  
 24 changes to provider rates, medicaid waivers, or the medicaid state plan, the department of public health and  
 25 human services shall report this information to the following committees:

- 26 ~~(a)(i)~~ the children, families, health, and human services interim committee;  
 27 ~~(b)(ii)~~ the legislative finance committee; and  
 28 ~~(c)(iii)~~ the health and human services budget committee.

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

3  
4           COORDINATION SECTION. SECTION 11. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 225  
5 AND [THIS ACT] ARE PASSED AND APPROVED AND SENATE BILL NO. 225 CONTAINS A SECTION AMENDING 2-4-305, THEN  
6 THE SECTION OF SENATE BILL NO. 225 AMENDING 2-4-305 MUST BE AMENDED TO READ AS FOLLOWS:

7           **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall  
8 fully consider written and oral submissions respecting the proposed rule, including comments submitted by the  
9 primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule  
10 that initially implements legislation.

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

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

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

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

28           (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject

1 matter of the rule as a subject upon which the agency shall or may adopt rules; or

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

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

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

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

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

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

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

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

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

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

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

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

28 (b)(c) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the

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

10 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-  
11 302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months  
12 of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in  
13 substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has  
14 provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's  
15 substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental  
16 notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit  
17 must be determined with reference to the latest notice in all cases.

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

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

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

28 (9) If a majority of the members of the appropriate administrative rule review committee notify the

1 committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the  
 2 committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice  
 3 and will address the objections at the next committee meeting. Following notice by the committee to the  
 4 agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication  
 5 of the last issue of the register that is published before expiration of the 6-month period during which the  
 6 adoption notice must be published, unless prior to that time, the committee meets and does not make the same  
 7 objection. A copy of the committee's notification to the agency must be included in the committee's records.

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

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

13

14 NEW SECTION. SECTION 12. Effective date. [This act] is effective July 1, 2021.

15

16 NEW SECTION. SECTION 13. TERMINATION. [SECTION 7] TERMINATES JUNE 30, 2025.

17

18 NEW SECTION. SECTION 14. CONTINGENT TERMINATION. (1) [SECTION 3] TERMINATES ON THE DATE THAT  
 19 THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES CERTIFIES TO THE GOVERNOR THAT THE  
 20 FEDERAL GOVERNMENT HAS TERMINATED THE PROGRAM OR THAT FEDERAL FUNDING FOR THE PROGRAM HAS BEEN  
 21 DISCONTINUED.

22 (2) THE GOVERNOR SHALL TRANSMIT A COPY OF THE CERTIFICATION TO THE CODE COMMISSIONER.

23

- END -