

1 SENATE BILL NO. 100

2 INTRODUCED BY C. SMITH

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 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 PUBLIC ASSISTANCE;
 7 ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT FOR A
 8 VERIFICATION SYSTEM; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND
 9 AMENDING SECTIONS 53-2-101 AND 53-2-201, MCA."

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

12
 13 **Section 1.** Section 53-2-101, MCA, is amended to read:
 14 **"53-2-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
 15 apply:

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

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

21 ~~(2)(3)~~ (3) "Needy person" is ~~one~~ an individual who is eligible for public assistance under the laws of this
 22 state.

23 ~~(3)(4)~~ (4) "Protective services" means services to children and adults to be provided by the department
 24 as permitted by Titles 41 and 53.

25 ~~(4)(5)~~ (5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
 26 under this title to a person by a state or county agency, regardless of the original source of the assistance.

27 ~~(5)(6)~~ (6) "Section 1115 waiver" means an experimental, pilot, research, or demonstration project, subject
 28 to approval by the secretary of the U.S. department of health and human services, authorized by section 1115

1 of Title XI of the Social Security Act, 42 U.S.C. 1315, for which certain requirements of the Social Security Act
2 are waived.

3 ~~(6)(7)~~ "Section 1915 waiver" means a waiver of certain medicaid requirements, subject to approval by
4 the secretary of the U.S. department of health and human services under section 1915 of Title XIX of the Social
5 Security Act, 42 U.S.C. 1396n, for the purposes of managing health care through restrictions on access to
6 providers or for establishing programs of home and community-based services."

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

12 (2) The department may enter into a competitively bid contract with a third-party vendor for the
13 purposes of developing a system by which to verify, as provided in [sections 3 and 4], the income, asset, and
14 identity information of applicants for public assistance to prevent fraud, misrepresentation, and inadequate
15 documentation when determining an individual's eligibility for public assistance:

- 16 (a) prior to the distribution of benefits;
17 (b) quarterly after enrollment and between any eligibility redeterminations; and
18 (c) during eligibility redeterminations and reviews.

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

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

- 23 (a) the payment structure must be based on a per-applicant rate and may include a performance
24 bonus for achieving above a predetermined rate of success in identifying waste, fraud, and abuse; and
25 (b) the vendor, in partnership with the department, must be required by the contract to establish
26 annualized savings realized from implementation of the verification system. Savings must exceed the total
27 yearly cost to the state of implementing the verification system.

28 (5) If the department does not enter into a contract with a third-party vendor, the requirements of this

1 section must be carried out by the department.

2 (6) To avoid any conflict of interest, a primary third-party vendor with whom the department enters
3 into a contract may not bid on or be awarded a state contract to run enrollment services.

4 (7) The department may continue to conduct any eligibility processes that were in practice before
5 entry into a contract pursuant to this section.

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7 **NEW SECTION. Section 3. Enhanced eligibility verification process.** (1) The department shall
8 process an application for public assistance within 10 days or the minimum period required by federal law. Prior
9 to awarding assistance and on a quarterly basis after assistance is awarded, the department shall verify
10 eligibility by checking the identity information of each applicant for and recipient of public assistance against:

- 11 (a) earned and unearned income information maintained by the internal revenue service;
12 (b) employer weekly, monthly, and quarterly reports of income and unemployment insurance payment
13 information maintained by the Montana department of labor and industry and the Montana department of
14 revenue;
15 (c) employment information maintained by the Montana department of labor and industry;
16 (d) wage reporting and similar information maintained by states contiguous to this state;
17 (e) the following information maintained by the U.S. social security administration:
18 (i) earned income information;
19 (ii) death register information;
20 (iii) prisoner information;
21 (iv) beneficiary records and earnings information;
22 (v) earnings and pension information; and
23 (vi) supplemental security income information;
24 (f) the following information maintained by the U.S. department of health and human services:
25 (i) new hires, as maintained in the department's national directory of new hires;
26 (ii) income and employment information maintained for the purposes of child support enforcement; and
27 (iii) veterans' benefits information, in coordination with the Montana department of public health and
28 human services and the Montana department of military affairs, in the federal public assistance reporting

- 1 information system database;
- 2 (g) immigration status information maintained by the U.S. citizenship and immigration services;
- 3 (h) public housing and Section 8 housing assistance payment information maintained by the U.S.
- 4 department of housing and urban development;
- 5 (i) national fleeing felon information maintained by the federal bureau of investigation;
- 6 (j) the following information maintained by the department:
- 7 (i) child-care services information;
- 8 (ii) utility payments made under the low-income home energy assistance program;
- 9 (iii) emergency utility payment information; and
- 10 (iv) income and employment information for the purposes of child support enforcement pursuant to
- 11 Title 40, chapter 5;
- 12 (k) a database of all persons who currently hold a license, permit, or certificate from any state agency,
- 13 the cost of which exceeds \$500;
- 14 (l) earnings and pension information maintained by a retirement system provided for in Title 19;
- 15 (m) any existing real-time database of persons currently receiving benefits in other states;
- 16 (n) potential changes in residency as indicated by out-of-state electronic benefit transfer transactions;
- 17 (o) any available databases or lists of individuals with substantial lottery or gambling winnings,
- 18 including but not limited to information maintained by the Montana state agencies responsible for regulating
- 19 gambling and the state lottery; and
- 20 (p) a database that is substantially similar to or a successor of a database listed in this section.
- 21 (2) Prior to awarding public assistance and on a quarterly basis after assistance is awarded, the
- 22 department shall match identity information of each applicant for and recipient of public assistance against, at
- 23 minimum, the following public records:
- 24 (a) a national public records data source of physical asset ownership, including but not limited to real
- 25 property, automobiles, watercraft, aircraft, luxury vehicles, and any other vehicle owned by the individual;
- 26 (b) a nationwide public records data source of incarcerated individuals;
- 27 (c) a nationwide best-address and driver's license data source to verify that the individual is a resident
- 28 of this state;

- 1 (d) a comprehensive public records database that identifies potential identity fraud or identity theft and
2 that can closely associate name, social security number, date of birth, phone, and address information;
- 3 (e) national and local financial institutions, in order to locate undisclosed depository accounts or verify
4 account balances of disclosed accounts;
- 5 (f) outstanding default or arrest warrant information maintained in criminal justice information systems;
6 and
- 7 (g) a database that is substantially similar to or a successor of a database listed in this section.
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9 **NEW SECTION. Section 4. Enhanced identity authentication process.** Before receiving public
10 assistance, an applicant for assistance shall complete a computerized identity authentication process to confirm
11 that the applicant owns the identity presented in the application. The department shall review the applicant's
12 identity ownership by:

- 13 (1) providing a knowledge-based quiz consisting of financial or personal questions. The quiz must
14 attempt to accommodate nonbanked or underbanked applicants who do not have an established credit history.
- 15 (2) providing for submission of the quiz through all channels, including online, in person, and by
16 phone.
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18 **NEW SECTION. Section 5. Discrepancies and case review.** (1) If a discrepancy is found between
19 the identity information provided by an applicant for or recipient of public assistance and one or more of the
20 databases or information tools listed under [section 3 or 4], the department shall review the case as provided in
21 this section.

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

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

26 (4) (a) If the department determines that a discrepancy or change in circumstances may affect the
27 eligibility of an applicant or recipient, the individual must be given an opportunity to explain the discrepancy or
28 change in circumstances. The department shall provide written notice to the individual describing in sufficient

1 detail the circumstances of the discrepancy or change, the manner in which the individual may respond, and
2 the consequences of failing to take action.

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

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

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

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

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

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

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

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

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NEW SECTION. Section 6. Referrals for fraud, misrepresentation, or inadequate

documentation. (1) After reviewing changes or discrepancies that may affect eligibility for public assistance, the department shall act on the reviews by:

- (a) removing from a public assistance program any individual found to be ineligible;
- (b) referring suspected cases of fraud to the department of justice as provided in Title 53, chapter 2, part 5, or to any other appropriate entity for investigation and possible criminal prosecution, recovery of improper payments, and collection of civil penalties;
- (c) referring suspected cases of identity fraud to the department of justice or to any other appropriate entity for investigation and possible criminal prosecution; and
- (d) referring determinations of ineligibility and suspected cases of fraud, misrepresentation, or inadequate documentation to other state agencies as appropriate for review of eligibility discrepancies in other public programs.

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

NEW SECTION. Section 7. Transparency in medicaid. The department shall electronically release

to the public the following data on providers participating in the medicaid program provided for in Title 53, chapter 6, part 1:

- (1) the type of service provided, based on the current medical coding system in use;
- (2) whether the service was provided in an office setting or a facility;
- (3) the number of services provided;
- (4) the average submitted charges and average allowed amount;
- (5) the average medicaid payment; and
- (6) a count of unique beneficiaries treated.

1 **NEW SECTION. Section 8. Reporting requirements.** The department shall provide a written report
2 to the governor, to the legislature in accordance with 5-11-210, and to the legislative auditor detailing the
3 effectiveness and general findings of the eligibility verification system, including but not limited to the number of
4 cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of
5 improper payments, collection of civil penalties, the savings that have resulted from the system, and the
6 outcomes of cases referred to the department of justice, a county attorney's office, or another state agency. The
7 report must be provided:

- 8 (1) 6 months following implementation of [sections 2 through 8]; and
9 (2) every 3 months after the initial report is made.

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

12 **"53-2-201. Powers and duties of department.** (1) The department shall:

- 13 (a) administer and supervise public assistance, including the provision of food stamps, food
14 commodities, cash assistance and nonfinancial assistance, as defined in 53-2-902, energy assistance,
15 weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability
16 services, medical care payments in behalf of recipients of public assistance, employment and training services
17 for recipients of public assistance, and other programs as necessary to strengthen and preserve families;
- 18 (b) give consultant service to private institutions providing care for adults who are needy, indigent, or
19 dependent or who have disabilities;
- 20 (c) cooperate with other state agencies and develop provisions for services to the blind, including the
21 prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational
22 guidance and training of the blind;
- 23 (d) organize and supervise the local offices of public assistance in an efficient and economical
24 manner;
- 25 (e) assist and cooperate with other state and federal departments, bureaus, agencies, and
26 institutions, when requested, by performing services in conformity with public assistance purposes;
- 27 (f) administer all state and federal funds allocated to the department for public assistance and do all
28 things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance

1 purposes;

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

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

6 (2) The department may:

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

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

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

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

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

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20 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
22 the part remains in effect in all valid applications that are severable from the invalid applications.

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