

1 SENATE BILL NO. 332

2 INTRODUCED BY T. MANZELLA, M. BINKLEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING IMMUNIZATION LAWS RELATED TO
5 FOSTER CARE; PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM
6 IMPLEMENTING OR ENFORCING IMMUNIZATION REQUIREMENTS NOT EXPRESSLY AUTHORIZED BY
7 THE LEGISLATURE; PROHIBITING THE WITHHOLDING OF ANY BENEFIT IN CONNECTION WITH
8 IMMUNIZATION STATUS; INVALIDATING ANY RULE INCONSISTENT WITH THIS DIRECTIVE; AMENDING
9 SECTION 52-2-603, MCA; REPEALING 37.51.306, ARM; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE."

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12 WHEREAS, the Legislature finds that a steep rise in the number of children entering foster care since
13 2008 has placed the foster care system under unprecedented strain; and

14 WHEREAS, the Legislature further finds that the number of children in need of quality child-placement
15 arrangements exceeds the number of licensed foster placements available; and

16 WHEREAS, the quality of foster placement may be further strained when too many foster children are
17 placed with a small number of families in a short period of time due to insufficient qualified foster families; and

18 WHEREAS, the Legislature finds that immunization requirements promulgated by the Department of
19 Public Health and Human Services may prevent families who would otherwise be willing and able to serve as
20 foster families from obtaining licensing; and

21 WHEREAS, the Legislature finds that requiring children of potential foster families to be immunized as
22 a condition of becoming licensed is against public policy and beyond the scope of any rulemaking authority
23 delegated to the department.

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

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27 **Section 1.** Section 52-2-603, MCA, is amended to read:

28 **"52-2-603. Powers and duties of department.** (1) The department shall:

- 1 (a) administer all state and federal funds allocated to the department for youth foster homes, kinship
 2 foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living
 3 programs for youth in need of care, as defined in 41-3-102;
- 4 (b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes,
 5 youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;
- 6 (c) collect and disseminate information relating to youth in need of care;
- 7 (d) provide for training of program personnel delivering services;
- 8 (e) in cooperation with youth care facility providers, develop and implement standards for youth care
 9 facilities;
- 10 (f) maintain adequate data on placements it funds in order to keep the legislature properly informed of
 11 the following:
- 12 (i) the number of youth in need of care in out-of-home care facilities;
- 13 (ii) the cost per facility for services rendered;
- 14 (iii) the type and level of care of services provided by each facility;
- 15 (iv) a profile of out-of-home care placements by level of care; and
- 16 (v) a profile of public institutional placements;
- 17 (g) administer all funds allocated to the department for residential alcohol and drug abuse treatment
 18 for indigent youth in need of care, indigent youth in need of intervention, and indigent delinquent youth who
 19 require treatment; and
- 20 (h) provide reimbursement for mental health outpatient counseling services for persons who
 21 experience the death of a foster child while providing substitute care to the foster child in a youth care facility.
- 22 (2) (a) The Except as provided in subsection (2)(b), the department may:
- 23 ~~(a)(i)~~ enter into contracts with nonprofit corporations or associations or private organizations to
 24 provide substitute care for youth in need of care in youth care facilities;
- 25 ~~(b)(ii)~~—accept gifts, grants, and donations of money and property from public and private sources to
 26 initiate and maintain community-based services to youth; and
- 27 ~~(c)(iii)~~—adopt rules to carry out the administration and purposes of this part.
- 28 (b) (i) The department is prohibited from adopting any rule that requires a foster child or foster family

1 to undergo immunization or other medical intervention as a condition of participation in the Montana foster care
2 system, except when this requirement is expressly and unambiguously required by law.

3 (ii) The department may not withhold a service, payment, subsidy, or other benefit available under this
4 part or the administrative rules authorized by this part based on a foster child or foster family's immunization
5 status.

6 (iii) Any existing regulation in conflict with subsection (2)(b)(i) or (2)(b)(ii) is void and must be repealed.

7 (3) The department shall pay for room, board, clothing, personal needs, and transportation in youth
8 foster care homes and youth group homes for youth who are in the physical or legal custody of the department
9 and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home
10 must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon
11 approval by the department, payments under this subsection may continue for a youth up to 21 years of age
12 who remains in substitute care. Payments under this subsection may not exceed appropriations for the
13 purposes of this subsection.

14 (4) The department may provide a subsidy for a guardianship of a child who is in the department's
15 legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in
16 accordance with eligibility criteria established by department rule."
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18 NEW SECTION. Section 2. Repealer. ARM 37.51.306 is repealed.

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20 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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