

1 HOUSE BILL NO. 655

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7

8 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING MEDICAID COVERAGE OF CERTAIN HOME

9 BIRTHS ATTENDED BY A MIDWIFE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-

10 8-202, 37-27-105, AND 53-6-101, AND 53-6-113, MCA; AND PROVIDING AN EFFECTIVE DATE."

11

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

13

14 **Section 1.** Section 37-8-202, MCA, is amended to read:

15 **"37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall:

- 16 (a) meet annually and elect from among the members a president and a secretary;
- 17 (b) hold other meetings when necessary to transact its business;
- 18 (c) prescribe standards for schools preparing persons for registration and licensure under this
- 19 chapter;
- 20 (d) provide for surveys of schools at times the board considers necessary;
- 21 (e) approve programs that meet the requirements of this chapter and of the board;
- 22 (f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license,
- 23 or removal of schools of nursing from the approved list;
- 24 (g) cause the prosecution of persons violating this chapter. The board may incur necessary
- 25 expenses for prosecutions.
- 26 (h) adopt rules regarding authorization for prescriptive authority of advanced practice registered
- 27 nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for
- 28 authorization, prescriptive authority must be granted.

1 (i) adopt rules to define criteria for the recognition of registered nurses who are certified through a
2 nationally recognized professional nursing organization as registered nurse first assistants; and

3 (j) establish a medical assistance program to assist licensees who are found to be physically or
4 mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug
5 or substance or by mental illness or chronic physical illness. The program must provide for assistance to
6 licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward
7 rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical
8 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to
9 enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a
10 qualified treatment program outside the state unless the board finds that there is no qualified treatment program
11 in this state. For purposes of funding this medical assistance program, the board shall adjust the renewal fee to
12 be commensurate with the cost of the program.

13 (2) The board may:

14 (a) participate in and pay fees to a national organization of state boards of nursing to ensure
15 interstate endorsement of licenses;

16 (b) define the educational requirements and other qualifications applicable to recognition of
17 advanced practice registered nurses. Advanced practice registered nurses are nurses who must have
18 additional professional education beyond the basic nursing degree required of a registered nurse. Additional
19 education must be obtained in courses offered in a university setting or the equivalent. The applicant must be
20 certified or in the process of being certified by a certifying body for advanced practice registered nurses.
21 Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and
22 clinical nurse specialists.

23 (c) establish qualifications for licensure of medication aides, including but not limited to educational
24 requirements. The board may define levels of licensure of medication aides consistent with educational
25 qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the
26 type of drugs that are allowed to be administered and the method of administration.

27 (d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

28 (e) adopt rules necessary to administer this chapter, including rules describing the circumstances

1 that constitute a low risk of adverse birth outcomes for planned home births attended by a nurse-midwife; and

2 (f) fund additional staff, hired by the department, to administer the provisions of this chapter."

4 **Section 2.** Section 37-27-105, MCA, is amended to read:

5 **"37-27-105. General powers and duties of board -- rulemaking authority.** (1) The board shall:

6 (a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform
7 the duties described in Title 37, chapter 1, and this section; and

8 (b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within
9 the scope of the board's duties.

10 (2) The board has the authority to administer and enforce all the powers and duties granted
11 statutorily or adopted administratively.

12 (3) The board shall adopt rules to administer this chapter. The rules may include but are not limited
13 to:

14 (a) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements
15 that, at a minimum, meet the standards established in 37-27-201;

16 (b) the development of eligibility criteria for client screening by direct-entry midwives to achieve the
17 goal of providing midwifery services to women during low-risk pregnancies;

18 (c) the establishment of the circumstances that constitute a low risk of adverse birth outcomes for
19 planned home births attended by direct-entry midwives;

20 ~~(e)~~(d) the development of standardized informed consent and reporting forms;

21 ~~(d)~~(e) the adoption of ethical standards for licensed direct-entry midwives;

22 ~~(e)~~(f) the adoption of supporting documentation requirements for primary birth attendants; and

23 ~~(f)~~(g) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards
24 established in 37-27-201."

26 **Section 3.** Section 53-6-101, MCA, is amended to read:

27 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana
28 medicaid program established for the purpose of providing necessary medical services to eligible persons who

1 have need for medical assistance. The Montana medicaid program is a joint federal-state program administered
2 under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The
3 department shall administer the Montana medicaid program.

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

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

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

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

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

15 (a) inpatient hospital services;

16 (b) outpatient hospital services;

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

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

20 (e) physicians' services;

21 (f) nurse specialist services;

22 (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of
23 age, in accordance with federal regulations and subsection (10)(b);

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

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

28 (j) services that are provided by physician assistants within the scope of their practice and that are

1 otherwise directly reimbursed as allowed under department rule to an existing provider;

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

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

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

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

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

9 (p) planned home births for women with a low risk of adverse birth outcomes, as established by
10 the appropriate licensing board, that are attended by certified ~~nurse midwives~~ nurse-midwives licensed under
11 Title 37, chapter 8, or direct-entry midwives licensed under Title 37, chapter 27. Coverage under this section
12 includes prenatal care and postpartum care.

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

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

17 (b) home health care services;

18 (c) private-duty nursing services;

19 (d) dental services;

20 (e) physical therapy services;

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

23 (g) clinical social worker services;

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

25 (i) prescribed eyeglasses;

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

27 (k) inpatient psychiatric hospital services for persons under 21 years of age;

28 (l) services of professional counselors licensed under Title 37, chapter 23;

Amendment - 1st Reading-white - Requested by: Katie Zolnikov - (H) Human Services

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Drafter: Sue O'Connell, 406-444-3597

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1 (m) hospice care, as defined in 42 U.S.C. 1396d(o);

2 (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including
3 targeted case management services for the mentally ill;

4 (o) services of psychologists licensed under Title 37, chapter 17;

5 (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C.
6 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;

7 (q) services of behavioral health peer support specialists certified under Title 37, chapter 38,
8 provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and

9 (r) any additional medical service or aid allowable under or provided by the federal Social Security
10 Act.

11 (5) Services for persons qualifying for medicaid under the medically needy category of assistance,
12 as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others
13 qualifying for assistance under the Montana medicaid program. The department is not required to provide all of
14 the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy
15 category of assistance.

16 (6) In accordance with federal law or waivers of federal law that are granted by the secretary of the
17 U.S. department of health and human services, the department may implement limited medicaid benefits, to be
18 known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as
19 defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of
20 medical assistance only who are covered under a group related to a program providing cash assistance, as
21 defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may
22 include those optional services listed in subsections (4)(a) through (4)(r) that the department in its discretion
23 specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated
24 by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a
25 particular service is commonly covered by private health insurance plans. However, a recipient who is
26 pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or
27 is less than 21 years of age is entitled to full medicaid coverage.

28 (7) The department may implement, as provided for in Title XIX of the Social Security Act, 42

1 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums,
2 deductibles, and coinsurance for persons not otherwise eligible for medicaid.

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

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

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

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

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

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

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

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

22 (12) (a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan,
23 the department of public health and human services shall report this information to the following committees:

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

25 (ii) the legislative finance committee; and

26 (iii) the health and human services budget committee.

27 (b) In its report to the committees, the department shall provide an explanation for the proposed
28 changes and an estimated budget impact to the department over the next 4 fiscal years.

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

6

7 ~~Section 2. Section 53-6-113, MCA, is amended to read:~~

8 ~~"53-6-113. Department to adopt rules. (1) The department shall adopt appropriate rules necessary~~
9 ~~for the administration of the Montana medicaid program as provided for in this part and that may be required by~~
10 ~~federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act,~~
11 ~~42 U.S.C. 1396, et seq., as amended.~~

12 ~~(2) The department shall adopt rules that are necessary to further define for the purposes of this~~
13 ~~part the services provided under 53-6-101 and to provide that services being used are medically necessary and~~
14 ~~that the services are the most efficient and cost-effective available. The rules may establish the amount, scope,~~
15 ~~and duration of services provided under the Montana medicaid program, including the items and components~~
16 ~~constituting the services.~~

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

- 21 ~~(a) the availability of appropriated funds;~~
- 22 ~~(b) the actual cost of services;~~
- 23 ~~(c) the quality of services;~~
- 24 ~~(d) the professional knowledge and skills necessary for the delivery of services; and~~
- 25 ~~(e) the availability of services.~~

26 ~~(4) The department shall specify by rule those professionals who may:~~

- 27 ~~(a) deliver or direct the delivery of particular services; and~~
- 28 ~~(b) deliver services by means of telehealth in accordance with 53-6-122.~~

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

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

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

12 ~~(c) — The department may not apply financial criteria below \$15,000 for an individual and \$30,000 for~~
13 ~~a couple for resources other than income in determining the eligibility of individuals for the medicaid program for~~
14 ~~workers with disabilities provided for in 53-6-195.~~

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

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

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

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

23 ~~(iii) — Nothing in this subsection (6)(d) may be construed as preventing a person from making only a~~
24 ~~cash payment to qualify for medicaid pursuant to 53-6-131(1)(e)(ii)(A).~~

25 ~~(7) — The department may adopt rules limiting eligibility based on criteria more restrictive than that~~
26 ~~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~~
27 ~~amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.~~

28 ~~(8) — The department may adopt rules establishing criteria for assessing the risk of adverse~~

1 ~~outcomes for pregnant women planning a home birth. The rules may establish medical conditions or~~
2 ~~circumstances that are not eligible for home birth because they present a high risk of adverse outcomes.~~

3 ~~(8)(9) The department may adopt rules necessary for the administration of medicaid managed care~~
4 ~~systems. Rules to be adopted may include but are not limited to rules concerning:~~

5 ~~(a) participation in managed care;~~

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

7 ~~(c) standards for the provision of managed care.~~

8 ~~(9)(10) Subject to subsection (6), the department shall establish by rule income limits for eligibility for~~
9 ~~extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who~~
10 ~~lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the~~
11 ~~department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended~~
12 ~~medical assistance will be provided. The department, in exercising its discretion to set income limits and~~
13 ~~duration of assistance, may consider the amount of funds appropriated by the legislature.~~

14 ~~(10)(11) Unless required by federal law or regulation, the department may not adopt rules that exclude~~
15 ~~a child from medicaid services or require prior authorization for a child to access medicaid services if the child~~
16 ~~would be eligible for or able to access the services without prior authorization if the child was not in foster care."~~

17
18 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2023.

19 - END -