

HOUSE BILL NO. 822

INTRODUCED BY B. KEENAN, L. JONES, J. ESP

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE PROVISION
5 OF SCHOOL-BASED MENTAL HEALTH SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH
6 AND HUMAN SERVICES TO SUPPORT AND FACILITATE SCHOOL DISTRICTS IN SEEKING
7 REIMBURSEMENT FOR SCHOOL-BASED BEHAVIORAL HEALTH SERVICES UNDER MEDICAID AND THE
8 CHILDREN'S HEALTH INSURANCE PROGRAM; PROVIDING A FRAMEWORK FOR SCHOOL-BASED AND
9 SCHOOL-LINKED MENTAL HEALTH SERVICES AND SUPPORTS; ALIGNING SCHOOL-BASED
10 BEHAVIORAL HEALTH SERVICES WITH THE MULTITIERED SYSTEM OF SUPPORTS; MODIFYING THE
11 COLLABORATIVE EFFORT BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
12 AND THE OFFICE OF PUBLIC INSTRUCTION IN SUPPORTING SCHOOL DISTRICTS AND ELIMINATING
13 THE SCHOOL-BASED SERVICES STATE SPECIAL REVENUE ACCOUNT; PROVIDING RULEMAKING
14 AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION;
15 AMENDING SECTION 53-6-101, MCA; REPEALING SECTION 20-9-240, MCA; AND PROVIDING AN
16 EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Purpose -- legislative intent.** (1) The purposes and desired outcomes
21 of [sections 1 and 2] are to:

22 (a) increase the capacity of schools to provide prevention, early intervention, and support to
23 students with mental health and substance abuse needs;

24 (b) provide school-based and community provider school-linked services to support Montana's
25 children in their local communities;

26 (c) improve the availability of school-based mental health services to maintain home and
27 community placements;

28 (d) reduce the reliance on facility-based, out-of-community and out-of-state placements for

1 Montana children; and

2 (e) provide for ~~warm hand-offs~~ AN EFFECTIVE TRANSITION for children returning from placements to
3 their home communities.

4 (2) The legislature intends that the department IN IMPLEMENTING AND ADMINISTERING SERVICES
5 UNDER [SECTIONS 1 AND 2]:

6 (a) ~~administer services under [sections 1 and 2] in a manner that minimizes~~ MINIMIZE to the
7 greatest extent possible the administrative burden on school districts; and

8 (b) expand the medicaid school-based fee schedule to include behavioral assessment or
9 screening, brief intervention, coaching, and treatment interventions;

10 (C) REQUIRE PARENTAL OR GUARDIAN CONSENT AND INVOLVEMENT WITH SCHOOL-BASED BEHAVIORAL
11 HEALTH SERVICES; AND

12 (D) DEVELOP PERTINENT METRICS AND REPORTING PROCEDURES TO MEASURE DESIRED OUTCOMES.

13

14 NEW SECTION. Section 2. School-based services -- multitiered system of supports. (1) The
15 department shall adopt the multitiered system of supports framework to support a continuum of behavioral
16 health services and supports in schools.

17 (2) The department, with the support and collaboration of the office of public instruction and
18 subject to appropriation, shall inventory and catalog existing school-based behavioral health services or
19 programs utilized by school districts. This inventory must include for each service or program:

20 (a) the service or program name;

21 (b) the funding source or sources;

22 (c) the targeted population;

23 (d) the multitiered system of supports tier;

24 (e) a list of school districts offering the service or program; and

25 (f) whether the service or program is ~~evidence-based~~ BEING EVALUATED FOR EFFECTIVENESS, THE
26 PROCESS OF THE EVALUATION, AND THE RESULTS.

27 (3) The department shall:

28 (a) identify a core set of recommended evidence-based OR EVIDENCE-INFORMED interventions for

1 ~~each~~ TIER I, II, AND III WITHIN THE multitiered system of supports tier;

2 (b) develop and implement a plan for providing training and technical assistance to school districts
3 and school-linked community providers on the core set of recommended evidence-based OR EVIDENCE-
4 INFORMED interventions, leveraging existing resources and programs to support a multitiered system of
5 supports. Training and technical assistance must include measuring and reporting on meeting the purposes
6 and desired outcomes under [section 1] or as prescribed by the department, including but not limited to
7 CHANGES IN functional assessment and maintenance in home and community placements.

8 (c) ~~in order to ensure behavioral~~ PRIORITIZE health services in small and rural school districts and
9 ~~to~~ support schools without existing programs or schools that would benefit from additional capacity or expertise
10 in behavioral health interventions, ~~develop~~ BY DEVELOPING innovative programs, subject to appropriation,
11 including but not limited to:

12 (i) cooperative programs; and

13 (ii) telehealth services as described in 53-6-122.

14 (4) The department shall report to the health and human services interim budget committee on:

15 (A) PROGRESS IN MEETING THE DESIRED OUTCOMES AND PURPOSES DEVELOPED PURSUANT TO [SECTION
16 1];

17 (B) AN ANALYSIS AND EVALUATION, CONDUCTED THROUGH RANDOM SAMPLING BY THE DEPARTMENT OR A
18 THIRD PARTY, OF THE APPROPRIATENESS OF INTERVENTIONS PROVIDED TO CHILDREN THROUGH SPECIFIC TARGETED
19 SCHOOL-BASED SERVICES WITHIN MULTITIERED SYSTEMS OF SUPPORT;

20 (C) ADDITIONAL OUTCOME MEASURES SIMILAR TO THOSE DESCRIBED IN 53-21-508 AS AN EFFORT TO
21 DETERMINE THE EFFECT OF A SPECIFIC TARGETED SCHOOL-BASED SERVICE ON THE LIKELIHOOD CHILDREN WILL REMAIN
22 IN THE HOME, SUCCEED IN SCHOOL, AND AVOID BEHAVIORAL PROBLEMS. SPECIFIC TARGETED SCHOOL-BASED SERVICES
23 WILL BE IDENTIFIED BY THE DEPARTMENT, TAKING THE COMMITTEE'S RECOMMENDATIONS INTO ACCOUNT.

24 (D) recommendations for investments to address the mental health and substance use needs of
25 children, including the identification of service gaps within the multitiered system of support.

26 (5) The department shall adopt rules as necessary to implement the multitiered system of supports
27 framework.

28 (6) THIS SECTION MAY NOT BE CONSTRUED TO ABROGATE A SCHOOL DISTRICT'S RESPONSIBILITIES UNDER

1 SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C. 794, OR THE INDIVIDUALS WITH DISABILITIES
2 EDUCATION ACT, 20 U.S.C. 1400, ET SEQ., INCLUDING THE OBLIGATION TO IDENTIFY, LOCATE, AND EVALUATE CHILDREN
3 WHO ARE IN NEED OF SPECIAL EDUCATION AND RELATED SERVICES.

4 ~~(6)~~(7) For the purposes of this section, "multitiered system of supports" means a framework
5 composed of:

6 (a) tier I, which provides all students with mental health promotion and literacy, INCLUDING BUT NOT
7 LIMITED TO APPROACHES ADDRESSING:

8 (i) CIVILITY;

9 (ii) ANTI-BULLYING; AND

10 (iii) INCENTIVES FOR GOOD BEHAVIOR;

11 (b) tier II, which provides at-risk students with early intervention services and supports to be
12 successful; and

13 (c) tier III, which provides students with mental health or substance use challenges with intensive
14 treatment services and supports to be successful.

15

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

17 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana
18 medicaid program established for the purpose of providing necessary medical services to eligible persons who
19 have need for medical assistance. The Montana medicaid program is a joint federal-state program administered
20 under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The
21 department shall administer the Montana medicaid program.

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

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

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

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

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

5 (a) inpatient hospital services;

6 (b) outpatient hospital services;

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

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

10 (e) physicians' services;

11 (f) nurse specialist services;

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

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

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

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

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

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

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

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

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

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

- 1 (a) medical care or any other type of remedial care recognized under state law, furnished by
2 licensed practitioners within the scope of their practice as defined by state law;
- 3 (b) home health care services;
- 4 (c) private-duty nursing services;
- 5 (d) dental services;
- 6 (e) physical therapy services;
- 7 (f) mental health center services administered and funded under a state mental health program
8 authorized under Title 53, chapter 21, part 10;
- 9 (g) clinical social worker services;
- 10 (h) prescribed drugs, dentures, and prosthetic devices;
- 11 (i) prescribed eyeglasses;
- 12 (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- 13 (k) inpatient psychiatric hospital services for persons under 21 years of age;
- 14 (l) services of professional counselors licensed under Title 37, chapter 23;
- 15 (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- 16 (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including
17 targeted case management services for the mentally ill;
- 18 (o) services of psychologists licensed under Title 37, chapter 17;
- 19 (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C.
20 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;
- 21 (q) services of behavioral health peer support specialists certified under Title 37, chapter 38,
22 provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; ~~and~~
- 23 (r) pursuant to [section 2], behavioral health services eligible for reimbursement under medicaid or
24 the children's health insurance program, when provided by a school district, without regard to whether the
25 services are provided under an individualized education program; and
- 26 ~~(s)~~(s) any additional medical service or aid allowable under or provided by the federal Social Security
27 Act.
- 28 (5) Services for persons qualifying for medicaid under the medically needy category of assistance,

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

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

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

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

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

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

27 (ii) publishing a report on an annual basis that describes the process that a mental health center or
28 chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment

1 from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

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

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

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

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

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

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

14 (ii) the legislative finance committee; and

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

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

18 (13) If available funds are not sufficient to provide medical assistance for all eligible persons, the
19 department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical
20 services made available under the Montana medicaid program after taking into consideration the funding
21 principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L.
22 2019.)"

23
24 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is

25 repealed:

26 20-9-240. Funding for school-based medical services -- duties of office of public instruction and
27 department of public health and human services -- school-based services account.

28

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2 NEW SECTION. SECTION 5. TRANSFER OF FUNDS. ANY UNENCUMBERED AND UNEXPENDED FUND BALANCE
3 IN THE SCHOOL-BASED SERVICES ACCOUNT ON JUNE 30, 2023, MUST BE TRANSFERRED TO THE CSCT-OPI STATE
4 MATCH ACCOUNT MANAGED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.

5

6 NEW SECTION. Section 6. Appropriation. (1) There is appropriated \$1 million from the state
7 general fund to the department of public health and human services for each year of the biennium beginning
8 July 1, 2023, for the purpose of implementing [sections 1 through 3].

9 (2) The legislature intends:

10 (a) that the department utilize other available funding to supplement this appropriation and, in
11 implementing [sections 1 through 3], maximize all available federal medicaid reimbursements; and

12 (b) that the appropriation in this section be considered part of the ongoing base for the next
13 legislative session.

14

15 NEW SECTION. Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified
16 as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [sections 1 and 2].

17

18 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2023.

19

- END -