

Children, Families, Health, and Human Services Interim Committee
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HEALTH AND HUMAN SERVICES LEGISLATION 2019 LEGISLATIVE SESSION

Background

The 2019 Legislature passed numerous bills involving health care, health insurance, children's issues, and human services. This summary provides an overview of major legislation – excluding the budget provisions of House Bill 2 – in the health and human services area. It focuses primarily on legislation that was approved by the Legislature. However, it also includes bills that were either:

- proposed by the 2017-2018 Children, Families, Health, and Human Services Interim Committee but that failed during the legislative process; or
- vetoed by the governor.

Children's Issues: Abuse/Neglect/Foster Care/Child Support

HB 347 Establishes that existing laws on grandparent-grandchild contact are not the sole remedy for grandparents, clarifying that grandparents have the right to seek a parental interest, visitation, parenting plan, authority as a caretaker relative, or custody, adoption, or guardianship of a child as allowed under other Montana statutes.

HB 502 Revises child abuse and neglect statutes to reflect the current practices of the Department of Public Health and Human Services (DPHHS) in investigating reports and handling cases of suspected child abuse or neglect; the changes were recommended as part of a legislative audit of the DPHHS Child and Family Services Division.

HB 604 Requires the Department of Public Health and Human Services (DPHHS) to develop a strategic plan for applying for and using funding available under the federal Family First Prevention Services Act relating to at-risk children and families; the plan must be provided to the Children, Families, Health, and Human Services Interim Committee by September 15, 2020.

HB 726 Continues the obligation of a noncustodial parent to pay child support for a child with a disability past the age of 18 when the custodial parent is the primary caretaker; the child support obligation continues until a court finds that the child is either no longer disabled or no longer financially dependent on the custodial parent.

SB 64 Expands the forms of income from which child support may be withheld, provides payor guidance on the allocation of income withholding, revises the definition of a health benefit plan for medical support enforcement, and revises the Uniform Interstate Family Support Act to conform with uniform laws.

Developmental and Physical Disabilities

HB 288 Revises the Achieving a Better Life Experience (ABLE) program to allow additional family members to receive a tax deduction for contributing to a disabled individual's ABLE account, allow residents of other states to set up accounts under Montana's ABLE program, and require that one member of the state's ABLE program oversight committee is a person with a disability.

HB 356 Revises the membership of the Committee on Telecommunications Access Services for Persons with Disabilities, replacing a representative from the largest telecommunications provider in the state with a person from a public safety answering point who has experience with emergency communications issues for individuals who are deaf or hard of hearing.

HB 439 Establishes that an emotional support animal is not a service animal, requires that service animals be in the handler's control, allows a business owner to file a complaint with law enforcement if the owners suspects a person is misrepresenting an animal as a service animal, and creates a misdemeanor offense for people who continue to misrepresent an animal after being given a written warning.

HB 680 Requires that a contract for targeted case management services for people with developmental disabilities must include funding to allow for an average caseload of no more than 35 clients per case manager; appropriates about \$1.5 million in each year of the biennium for contracted case management services.

SB 5 Requires the DPHHS Developmental Services Division to work with providers to identify areas in which administrative rules, policies, or procedures are duplicative, contradictory, or a waste of resources and eliminate those that are not cost-effective or that duplicate other oversight and monitoring requirements; DPHHS must provide the Children, Families, Health, and Human Services Interim Committee, by January 1, 2020, with its draft plan for carrying out the review.

Health Care/Health Insurance

Health Care

HB 231 Allows immunization-certified pharmacists to provide immunizations to individuals 7 years of age or older.

HB 489 Repeals the certificate of public advantage laws, which require the Department of Justice to review and approve proposed mergers of health care facilities and to monitor, for a period of 10 years, any mergers that are approved.

HB 598 Requires the DPHHS environmental laboratory to license, inspect, and adopt administrative rules for medical marijuana testing laboratories and establishes certain testing procedures and requirements for the testing laboratories.

HB 599 Allows individuals who have been certified under federal community health aide certification standards to work as a dental health aide, behavioral health aide, or community health aide without obtaining state licensure if the individuals are practicing within the scope of their certification and in a setting operated by the Indian Health Service or a tribal health program.

HB 669 Reduces the Medicaid reimbursement rate for physicians by \$600,000 over the biennium to fund the development of a health information exchange that will allow the electronic sharing of patient data among health care providers, facilities, and insurers.

SB 38 Allows emergency care providers to obtain an endorsement that will allow them to provide nonemergency, community-based health care services in accordance with rules adopted by the Board of Medical Examiners.

SB 157 Allows a dental auxiliary to perform certain tasks without being directly supervised by a dentist.

SB 265 Makes numerous changes to the Montana Medical Marijuana Act, including establishing new licensing requirements and fees for medical marijuana providers, dispensaries, and testing laboratories; prohibiting use of third parties to manufacture marijuana-infused products; revising requirements for inspections of medical marijuana premises and testing laboratories; allowing medical marijuana cardholders to purchase marijuana products from any provider by July 1, 2020; temporarily increasing the tax on gross sales from 2% to 4%; establishing a monthly limit on the amount of marijuana that a cardholder can purchase; and allowing use of telemedicine for a physician to provide the written certification of a cardholder's medical condition.

Health Insurance

HB 555 Revises requirements for utilization review by insurers, including reducing the time periods for determining whether payment will be authorized for certain services.

SB 125 Establishes a reinsurance program to help insurers pay for high-cost medical claims, with the program funded through a combination of a premium tax on participating insurers and federal funds that would become available if the state applies for and receives a waiver from the federal government.

Medicaid/Healthy Montana Kids Plan

HB 83 Eliminates the Health and Economic Livelihood Partnership (HELP) Act Oversight Committee, which was created in 2015 to review matters related to the Medicaid expansion program that was approved in that session.

HB 433 Requires DPHHS to provide the Legislative Fiscal Division with direct access to its secure data warehouse as the project becomes implemented, so the Fiscal Division can obtain information about recipients of public assistance, including Medicaid; DPHHS must report quarterly to the Children, Families, Health, and Human Services Interim Committee on implementation of the project and the status of the Fiscal Division's access to data.

HB 529 Requires DPHHS to establish by administrative rule the procedures for moving individuals off of waiting lists for Medicaid home and community-based waiver services and into waiver services.

HB 658 Extends the HELP ACT (Medicaid expansion) program for six years while also making several changes to the law, including: adding requirements for certain individuals to participate in at least 80 hours of community engagement activities; revising the premium structure so individuals on the program for more than two years pay higher premiums; eliminating copayments for services; establishing stricter requirements for verifying eligibility; and revising the list of assets that may subject someone to a fee on assets above those allowed under HB 658. The state will need to apply for a waiver from the federal government to allow the community engagement and premium requirements to go into effect.

Mental Health/Substance Abuse

HB 103 Expands the types of health care providers who can confirm that a person is chemically dependent and in need of medically monitored or managed inpatient care; physicians, naturopathic physicians, and advanced practice registered nurses will be able to make that determination, in addition to licensed addiction counselors.

HB 388 Allows the use of funds appropriated to in-state psychiatric hospitals and residential treatment facilities for student education to be distributed to public school districts to support students with significant behavioral or physical needs.

HB 626 Creates two new levels of social worker licensure, in addition to the existing licensed clinical social worker (LCSW) level – a licensed baccalaureate social worker and a licensed master's social worker.

HB 654 Creates a \$500 annual licensing fee on wholesale distributors of opioid prescription drugs and requires revenue from the new fee to be used to expand the capacity of existing mental health and drug treatment courts and to extend treatment courts to unserved areas of the state.

HB 660 Establishes a two-year \$500,000 grant program for creating create mobile crisis units, consisting of a mental health professional and a support person, in up to four locations in the state.

HB 669 Transfers \$3.5 million over the biennium from the telecommunications access special revenue account to a new special revenue account to pay for extended employment services for people with disabilities and for targeted case management services for adults and children with mental illness.

HB 696 Appropriates \$500,000 of interest earnings on the tobacco settlement trust fund for suicide prevention grants during the next biennium; grant activities must be focused on reducing suicide among veterans and youth.

SB 30 Allows for Medicaid coverage of mental health peer support services, using \$2.5 million in medical marijuana taxes and fees to cover the costs.

SB 267 Transfers the responsibility for licensing and inspecting private alternative adolescent residential or outdoor programs from the Department of Labor and Industry to DPHHS and requires DPHHS to report to the Children, Families, Health, and Human Services Interim Committee on its efforts to license and adopt rules for the programs.

SB 289 Exempts a pregnant woman who seeks or receives evaluation, treatment, or support services for a substance use disorder from prosecution for criminal possession of dangerous drugs, precursors to dangerous drugs, or drug paraphernalia.

Prescription Drugs

HB 86 Establishes new requirements for prescribing and dispensing opioid prescriptions, including requiring a patient to provide photo identification to receive an opioid; limiting opioid-naïve patients to a 7-day supply of opioids; and beginning July 1, 2021, requiring prescribers to check the Montana Prescription Drug Registry before issuing a prescription for an opioid.

HB 137 Establishes an annual, statewide prescription drug take-back day to coincide with the day in October that is designated as a national prescription drug take-back day.

SB 61 Revises the Montana Prescription Drug Registry laws to: require all licensed health care providers who prescribe or dispense prescription drugs to register to use the registry; allow additional sharing of registry information; and remove the \$30 cap and the sunset date on the registry fee that helps fund the database.

SB 83 Establishes allowable and prohibited practices for PBMs and other third-party payers of prescription drug benefits; among other things, a PBM or other payer may not charge a patient a copayment that exceeds the cost of the prescription drug being dispensed and may not prohibit a pharmacy or pharmacist from disclosing information regarding the amount the PBM or other payer is reimbursing the pharmacy for the drug.

SB 270 Prohibits an insurer or PBM from penalizing a pharmacy or pharmacist for providing prescription drug reimbursement criteria to a patient or from requiring a pharmacy to charge or collect a copayment that exceeds the total charges submitted by the pharmacy for the prescribed drug.

SB 274 Makes various revisions to Montana's dangerous drug scheduling laws, including a requirement Montana automatically reschedule any drug that contains specified tetrahydrocannabinols from Schedule I to the same schedule it is

placed in by the U.S. Drug Enforcement Administration once the drug is federally authorized under the Food, Drug, and Cosmetic Act.

SB 335 Prohibits an insurer or PBM from paying health care facilities that offer prescription drugs through the federal 340B program less than the amount set for a drug in established national or state standards and prohibits insurers and PBMs from charging those facilities an additional fee or other charge for the drugs if the fee or charge is not imposed on other health care facilities.

Public Health

HB 413 Prohibits the use of a vapor product or e-cigarette in a public school building or on public school property.

Senior Citizens

HB 334 Requires that the criminal offense of exploitation of an older, incapacitated, or developmentally disabled person requires the use of deception, duress, menace, fraud, undue influence, or intimidation.

HB 566 Requires assisted living facilities to conduct a background check on all individuals who have accepted employment and prohibits facilities from employing anyone who has been professionally disciplined or found guilty of a crime if the matter involved abuse, neglect, exploitation, mistreatment, or misappropriation of property.

HB 669 Transfers about \$1 million over the biennium from the Older Montanans Trust Found account to DPHHS to create 100 new Medicaid home and community-based waiver slots for the elderly and physically disabled.

SB 205 Prohibits a person who has participated in the financial exploitation of a senior citizen or developmentally disabled or incapacitated person from obtaining benefits from the exploited individual's estate.

SB 324 Revises the definition of abuse in the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act to include the act of causing personal degradation of a person by distributing photos or videos meant to demean or humiliate the person if the photos or videos were taken in a place where the person has a reasonable expectation of privacy.

Children, Families, Health, and Human Services Interim Committee

The Legislature approved two of the eight bills proposed by the 2017-2018 Children and Families Committee: HB 83 to eliminate the HELP Act Oversight Committee and SB 5, to require a review of administrative rules, policies, and procedures related to community developmental disability services. The following bills did not make it through the process:

- HB 17, establishing requirements for use of general fund appropriated for community developmental disabilities services and creating a grant program with any unused general fund appropriation;
- HB 25, requiring the use of validated tools for assessing the needs of developmentally disabled persons;
- HB 26, appropriating funds for a wage increase for developmental disabilities direct-care workers;
- HB 69, establishing requirements for DD crisis response services;
- SB 4, requiring a daily or monthly reimbursement rates for certain DD services, including group homes; and
- SB 7, requiring DPHHS to propose an inflationary increase for DD providers for consideration as part of the executive budget proposal.

SB 4 was tabled without a hearing at the sponsor's request after DPHHS notified providers that it intended to change its hourly reimbursement rate for certain services to a daily rate, essentially accomplishing the purpose of the legislation.

Health and Human Services Legislation Vetoed by Governor

The governor vetoed the following bills:

- HB 290, requiring cooperation with the state child support enforcement agency as a condition of eligibility for Supplemental Nutrition Assistance Program benefits;
- HB 473, moving the responsibility for investigating reports of suspected abuse, neglect, or exploitation of residents of long-term care facilities from the DPHHS Senior and Long-Term Care Division to the agency's Quality Assurance Division, which licenses health care facilities;
- HB 481, exempting bona fide private social clubs from the requirements of the Montana Clean Indoor Air Act;
- HB 500, making it a felony to perform or attempt an abortion of an unborn child capable of feeling pain, defined in the bill as a fetus that is 20 weeks or older;
- HB 537, eliminating the certificate of need requirement for inpatient chemical dependency facilities;
- HB 753, allowing a parent, family member, or foster parent to file a complaint with the Office of the Child and Family Ombudsman if the individual believes a DPHHS employee has retaliated or discriminated against the person because the person has raised concerns about the handling of a child abuse or neglect case;
- SB 71, establishing requirements for health insurers in the administration of pharmacy benefits and the development of prescription drug formularies;
- SB 100, requiring a health care provider to offer a pregnant woman the opportunity to view an ultrasound and hear a fetal heartbeat before performing an abortion and requiring the woman to sign a form acknowledging she was offered the opportunity and indicating whether she accepted it or not;
- SB 216, requiring the Office of the Child and Family Ombudsman to share information about its investigations of complaints against DPHHS with county attorneys and the courts and to notify the attorney general if the investigations shows a repeated pattern of violations of DPHHS policies, practices, or procedures; and
- SB 354, prohibiting a person from depriving an infant from appropriate medical care and nourishment if the infant is alive outside the mother's womb and is at least 8 weeks of development through 30 days postbirth, including in instances when an abortion results in the live birth of a viable infant.

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