



Children, Families, Health, and Human Services Interim Committee

67th Montana Legislature

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TO: Children, Families, Health, and Human Services Interim Committee
FROM: Sue O'Connell, Legislative Research Analyst
DATE: August 5, 2022
RE: Medicaid Mandatory and Optional Services

This memorandum follows up on two questions raised by committee members in June:

- Can a state require its Medicaid program to cover health care services that are optional under federal law?
- If so, what are the implications of requiring coverage?

Federal Law Parameters

States are not required to participate in the Medicaid program. However, any state that chooses to do so must cover a menu of health care services as specified in federal law. Those items are generally referred to as "mandatory services."

Federal law also allows states to cover some other health care services. Those are generally referred to as the "optional" Medicaid services, because states are not required to offer them.

State Discretion Regarding Optional Services

A state Medicaid agency or legislature can decide to include in its Medicaid program one or more of the services that are optional under federal law. Sometimes, state legislatures enact bills to require, rather than simply allow, the state's plan to cover an optional service.

The statute authorizing Montana's Medicaid program – 53-6-101, MCA – spells out the health care services covered by the program. Within that statute:

- subsection (3) lists the services that the program *must* cover. This subsection does not give the Department of Public Health and Human Services any leeway in determining whether to pay for services in the list.
- subsection (4) lists the services that DPHHS *may* include in the program. The agency must adopt rules to include any of those services in the state Medicaid program.

Implications of Requiring Coverage of a Federally Optional Service

Legislative action requiring Montana's Medicaid program to cover a service that is optional, rather than mandatory, under federal law has a couple of implications:

- The requirement will have a fiscal impact, which will be estimated in a fiscal note by the Office of Budget and Program Planning if the bill does not include an appropriation to cover the costs. When estimating costs, OBPP would consider the degree to which the service is likely to be used and the probable reimbursement rate for it.
- DPHHS cannot eliminate coverage of the service if the state experiences budget difficulties. The agency could adopt rules to change the payment rate for the service. But it could not eliminate coverage of the service altogether. Instead, the Legislature would have to change the law. That opportunity only comes along every two years, barring a special session.