

HOUSE BILL NO. 473

INTRODUCED BY J. GILLETTE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING MEDICARE FEE SCHEDULES ISSUED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TO BE ADOPTED BY RULE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING FOR ADOPTION OF MEDICARE FEE SCHEDULES ISSUED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; PROVIDING FOR AUTOMATIC INCORPORATION OF UPDATED MEDICARE FEE SCHEDULES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-302, 2-4-305, 2-4-306, 2-4-307, AND 53-6-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(e). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall

1 pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

2 (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

3 (ii) the number of persons affected.

4 (2) (a) The proposal notice must be filed with the secretary of state for publication in the register,
5 as provided in 2-4-312. When the agency files the proposal notice with the secretary of state to prepare it for
6 publication in the register, the agency shall concurrently send an electronic copy of the proposal notice to the
7 appropriate administrative rule review committee. If the secretary of state requires formatting changes to the
8 proposal notice before it may be published, the agency is not required to send another copy of the proposal
9 notice to the committee. The requirement to concurrently send a copy of the proposal notice to the committee is
10 fulfilled if the agency sends an electronic copy to each member of the staff of the appropriate rule review
11 committee on the same day that the notice is filed with the secretary of state.

12 (b) (i) Except as provided in subsection (2)(b)(ii), within 3 days of publication, a copy of the
13 published proposal notice must be sent to interested persons who have made timely requests to the agency to
14 be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or
15 organization or member of those entities who has filed a request with the appropriate administrative rule review
16 committee when the request has been forwarded to the agency as provided in subsection (2)(c).

17 (ii) In lieu of sending a copy of the published proposal notice to an interested person who has
18 requested the notice, the agency may, with the consent of that person, send that person an electronic
19 notification that the proposal notice is available on the agency's website and an electronic link to the part of the
20 agency's website or a description of the means of locating that part of the agency's website where the notice is
21 available.

22 (iii) Each agency shall create and maintain a list of interested persons and the subject or subjects
23 in which each person on the list is interested. A person who submits a written comment or attends a hearing in
24 regard to proposed agency action under this part must be informed of the list by the agency. An agency
25 complies with this subsection (2)(b)(iii) if it includes in the proposal notice an advisement explaining how
26 persons may be placed on the list of interested persons and if it complies with subsection (7).

27 (c) The appropriate administrative rule review committee shall forward a list of all organizations or
28 persons who have submitted a request to be informed of agency actions to the agencies that the committee

oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(d) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state digital access system or other electronic communications system available to the public.

(e) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(e) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(e)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(e).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less,

1 of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by
2 the appropriate administrative rule review committee, or by an association having not less than 25 members
3 who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the
4 agency shall schedule an oral hearing.

5 (5) An agency may continue a hearing date for cause. In the discretion of the agency, contested
6 case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise
7 required by statute, nothing in this section alters that requirement.

8 (6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the
9 agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a
10 new proposal for purposes of compliance with this chapter.

11 (7) At the commencement of a hearing on the intended action, the person designated by the
12 agency to preside at the hearing shall:

13 (a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the
14 register; and

15 (b) inform the persons at the hearing of the provisions of subsection (2)(b) and provide them an
16 opportunity to place their names on the list.

17 (8) (a) For purposes of contacting primary sponsors under subsection (2)(e), a current or former
18 legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail
19 address, and telephone number on file with the secretary of state. The secretary of state may also use
20 legislator contact information provided by the legislative services division for the purposes of the register. The
21 secretary of state shall update the contact information whenever the secretary of state receives corrected
22 information from the legislator or the legislative services division. An agency proposing rules shall consult the
23 register when providing sponsor contact.

24 (b) An agency has complied with the primary bill sponsor contact requirements of this section
25 when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address,
26 and telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to
27 contact the primary sponsor by using less than all of these three methods of contact, the other methods need
28 not be used.

(9) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

(10) (a) This section applies to the department of public health and human services' adoption of rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United States department of health and human services as provided in 53-6-113.

(b) This section does not apply to the automatic updating of department of public health and human services rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United States department of health and human services."

Section 2. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity -- authority and statement of reasons. (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

1 (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking
2 authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted
3 rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule
4 purports to implement. A substantive rule may not be proposed or adopted unless:

5 (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject
6 matter of the rule as a subject upon which the agency shall or may adopt rules; or

7 (b) the rule implements and relates to a subject matter or an agency function that is clearly and
8 specifically included in a statute to which the grant of rulemaking authority extends.

9 (4) Each rule that is proposed and adopted by an agency and that implements a policy of a
10 governing board or commission must include a citation to and description of the policy implemented. Each
11 agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply
12 with the requisites for validity of rules established by this chapter.

13 (5) To be effective, each substantive rule adopted must be within the scope of authority conferred
14 and in accordance with standards prescribed by other provisions of law.

15 (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt
16 rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption,
17 amendment, or repeal of a rule is not valid or effective unless it is:

18 (a) consistent and not in conflict with the statute; and

19 (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the
20 agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable
21 necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity
22 requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and
23 the rationale for its intended action and for the particular approach that it takes in complying with the mandate
24 to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly
25 demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking
26 and in the written and oral data, views, comments, or testimony submitted by the public or the agency and
27 considered by the agency. A statement that merely explains what the rule provides is not a statement of the
28 reasonable necessity for the rule.

1 (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-
2 4-302, 2-4-303, or 2-4-306 and this section, unless notice of adoption of the rule is published within 6 months of
3 the publishing of notice of the proposed rule, and unless the adoption is in compliance with the prohibitions of
4 subsection ~~(11)~~ (12). The measure of whether an agency has adopted a rule in substantial compliance with 2-4-
5 302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule,
6 standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302,
7 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final
8 rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with
9 reference to the latest notice in all cases.

10 (8) (a) An agency may use an amended proposal notice or the adoption notice to correct
11 deficiencies in citations of authority for rules and in citations of sections implemented by rules.

12 (b) An agency may use an amended proposal notice but, except for clerical corrections, may not
13 use the adoption notice to correct deficiencies in a statement of reasonable necessity.

14 (c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity
15 for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a
16 clerical nature, the agency shall allow additional time for oral or written comments from the same interested
17 persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor
18 notification was required under 2-4-302, and from any other person who offered comments or appeared at a
19 hearing already held on the proposed rule.

20 (9) Subject to 2-4-112, if a majority of the members of the appropriate administrative rule review
21 committee notify the committee presiding officer that those members object to all or a portion of a notice of
22 proposed rulemaking, the committee shall notify the agency in writing that the committee objects to all or a
23 portion of the proposal notice and will address the objections at the next committee meeting. Following notice
24 by the committee to the agency, all or a portion of the proposal notice that the committee objects to may not be
25 adopted until publication of the last issue of the register that is published before expiration of the 6-month
26 period during which the adoption notice must be published, unless prior to that time, the committee meets and
27 does not make the same objection. A copy of the committee's notification to the agency must be included in the
28 committee's records.

(10) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

(11) (a) This section applies to the department of public health and human services' adoption of rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United States department of health and human services as provided in 53-6-113.

(b) This section does not apply to the automatic updating of department of public health and human services rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United States department of health and human services.

~~(11)(12)~~(a) In the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year.

(b) This subsection ~~(11)~~ (12) does not apply to:

(i) an emergency rule adopted under 2-4-303;

(ii) subject to subsection ~~(11)(c)(i)~~ ~~(12)(c)(i)~~, a rule adopted for implementation of a program or policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1; or

(iii) subject to subsection ~~(11)(c)(ii)~~ ~~(12)(c)(ii)~~, a rule adopted by providing the proposal notice and statement of reasoning with an opportunity to object to the appropriate administrative rule review committee.

(c) (i) A rule may only be exempted under subsection ~~(11)(b)(ii)~~ ~~(12)(b)(ii)~~ if the notice required under 2-4-302(1)(a) provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

(ii) A rule may be exempted under subsection ~~(11)(b)(iii)~~ ~~(12)(b)(iii)~~ only if the agency provides a copy of the proposal notice and an explanation of the reason why the rule must be adopted before the end of the year by electronic mail to each member of the committee and the committee staff. If the committee does not object to the proposal within 10 business days after the electronic mail of the proposal and explanation has been sent to the committee, the agency may proceed with adoption of the proposed rule. If, during the 10-day review period, a majority of the members notify the committee presiding officer that those members object to the proposed rulemaking, the presiding officer shall notify the agency by electronic mail that the committee objects. Following notice of the objection, a rule may not be adopted before the end of the year."

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2 **Section 3.** Section 2-4-306, MCA, is amended to read:3 **"2-4-306. Filing and format -- adoption and effective dates -- dissemination of emergency rules.**

4 (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule
5 as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the
6 secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state
7 requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with
8 the secretary of state.

9 (2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this
10 chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules
11 that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in
12 compliance with this chapter and the secretary of state's rules. The secretary of state shall keep and maintain a
13 permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to
14 public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise
15 provided by statute, the secretary of state may require the payment of the cost of providing copies.

16 (3) If the appropriate administrative rule review committee has conducted a poll of the legislature in
17 accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the
18 agency.

19 (4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

20 (a) if a later date is required by statute or specified in the rule, the later date is the effective date;

21 (b) subject to applicable constitutional or statutory provisions:

22 (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated
23 date following publication in the register; and

24 (ii) an emergency rule is effective at a stated date following publication in the register or
25 immediately upon filing with the secretary of state if the agency finds that this effective date is necessary
26 because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of
27 reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the
28 register, take appropriate and extraordinary measures to make emergency rules known to each person who

1 may be affected by them.

2 (c) if, following written administrative rule review committee notification to an agency under 2-4-
3 305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the
4 proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the
5 day after final adjournment of the regular session of the legislature that begins after the notice proposing the
6 rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1) and
7 subject to 2-4-112:

8 (i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

9 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority
10 of the committee members, as communicated in writing to the committee presiding officer and staff, make it
11 comply with the committee's objection and concerns.

12 (5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or
13 adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection
14 prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the
15 proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful
16 authority.

17 (6) This section applies to the department of labor and industry adopting a rule relating to a
18 commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of
19 department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

20 (7) (a) This section applies to the department of public health and human services' adoption of
21 rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United
22 States department of health and human services as provided in 53-6-113.

23 (b) This section does not apply to the automatic updating of department of public health and
24 human services rules relating to medicare fee schedules issued by the centers for medicare and medicaid
25 services of the United States department of health and human services."

26

27 **Section 4.** Section 2-4-307, MCA, is amended to read:

28 **"2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code,

1 federal agency rule, rule of any agency of this state, or other similar publication if:

2 (a) the publication of the model code, rule, or other publication would be unduly cumbersome,
3 expensive, or otherwise inexpedient; and

4 (b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state
5 of Montana.

6 (2) The model code, rule, or other publication must be adopted by reference in a rule adopted
7 under the rulemaking procedure required by this chapter. The rule must contain a citation to the material
8 adopted by reference and a statement of the general subject matter of the omitted rule and must state where a
9 copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted
10 material must be filed with the secretary of state.

11 (3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to
12 subsection (1):

13 (i) must be in existence at the time that the agency's notice of proposed rulemaking is published in
14 the register;

15 (ii) must be available to the public for comment, through either publication in the register or
16 publication in an electronic format on the agency's web page, during the time that the rule adopting the model
17 code, rule, or other publication is itself subject to public comment; and

18 (iii) except as provided in subsection (3)(b), may not be altered between the time of publication of
19 the notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the
20 rule unless the alteration is required in order to respond to comments in the rulemaking record of the adopting
21 agency.

22 (b) If the model code, rule, or other publication is altered by the agency between the time of the
23 publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or
24 other publication that is altered by the agency is not adopted unless that part is also subject to a separate
25 process of adoption as provided in this section.

26 (c) If the model code, rule, or other publication is made available on the agency's website, the
27 website may provide either the full text of the model code, rule, or other publication or a link to the source of the
28 official electronic text of the model code, rule, or other publication.

(4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided in subsection (6), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(6) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

(7) If a hearing is requested under subsection (6), the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.

(8) This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704

(9) This section does not apply to the automatic updating of department of public health and human services rules relating to medicare fee schedules issued by the centers for medicare and medicaid services of the United States department of health and human services as provided in 53-6-113."

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2 **Section 5.** Section 53-6-113, MCA, is amended to read:

3 **"53-6-113. Department to adopt rules.** (1) The department shall adopt appropriate rules necessary
4 for the administration of the Montana medicaid program as provided for in this part and that may be required by
5 federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act,
6 42 U.S.C. 1396, et seq., as amended.

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

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

- 16 (a) the availability of appropriated funds;
17 (b) the actual cost of services;
18 (c) the quality of services;
19 (d) the professional knowledge and skills necessary for the delivery of services; and
20 (e) the availability of services.

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

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

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

26 (6) (a) The department may adopt rules consistent with this part to govern eligibility for the
27 Montana medicaid program, including the medicaid program provided for in 53-6-195. Rules may include but
28 are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial

1 criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant
2 and recipient information, and cooperation with the state agency administering the child support enforcement
3 program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

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

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

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

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

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

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

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

20 (7) The department may adopt rules limiting eligibility based on criteria more restrictive than that
21 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
22 amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

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

25 (a) participation in managed care;

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

27 (c) standards for the provision of managed care.

28 (9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for

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

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

9 (11) (a) When establishing rates of reimbursement for services provided under this part, the
10 department may adopt by rule medicare fee schedules issued by the centers for medicare and medicaid
11 services of the United States department of health and human services.

12 (b) If the department adopts fee schedules as provided in subsection (11)(a), the schedules
13 automatically incorporate changes and updates furnished by the centers for medicare and medicaid services
14 that are made during the year. The provisions of 2-4-307 do not apply to automatic updates of the fee
15 schedules."

16
17 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

18 - END -