

SENATE BILL NO. 296

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE SENIOR CARE FACILITY ACCESS AND STABILIZATION ACT; REVISING FUNDING LAWS RELATED TO SKILLED NURSING AND ASSISTED LIVING FACILITIES; ESTABLISHING PROCEDURES FOR CALCULATING ROOM AND BOARD FOR ASSISTED LIVING RESIDENTS; REQUIRING MONEY APPROPRIATED FOR NURSING HOME SERVICES TO BE USED ONLY FOR THOSE PURPOSES; AMENDING SECTION 53-6-113, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Senior Care Facility Access and Stabilization Act".

NEW SECTION. **Section 2. Purpose.** (1) The legislature affirms the importance of providing frail, elderly Montanans with quality residential long-term care services that meet health and safety standards and are provided close to home, family, and friends.

(2) The purposes of [sections 1 through 8] are to:

(a) ensure that residential long-term care services are available close to home for Montana seniors who need that level of care;

(b) ensure that the state takes steps to stabilize medicaid payments to residential long-term care

1 facilities to avoid closures of nursing homes and to maintain access to assisted living facilities for those on  
2 medicaid;

3 (c) establish standards for setting medicaid rates;

4 (d) provide for inflationary adjustments;

5 (e) clarify uses of legislative appropriations; and

6 (f) maximize the use of federal funds for senior and long-term care services.

7  
8 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8], the following definitions  
9 apply:

10 (1) "Assisted living facility" has the meaning provided in 50-5-101.

11 (2) "Department" means the department of public health and human services provided for in 2-15-  
12 2201.

13 (3) "Medicaid" means the medical assistance program established under Title 53, chapter 6.

14 (4) "Nursing home" means a facility that provides skilled nursing care as defined in 50-5-101 and is  
15 certified by the centers for medicare and medicaid services to participate in the medicare or medicaid program.

16 (5) "Residential long-term care services" means assisted living facility services and nursing home  
17 services.

18  
19 **NEW SECTION. Section 4. Medicaid rates for residential long-term care services.** (1) (a) In  
20 setting medicaid reimbursement rates for nursing homes, the department shall consider:

21 (i) the actual costs of providing the services, including costs associated with quality and safety  
22 standards;

23 (ii) inflation;

24 (iii) the acuity of the residents served in the facility;

25 (iv) cost factors unique to specific geographic regions, including local or regional labor and housing  
26 costs and circumstances unique to rural facilities;

27 (v) the cost of complying with revised or new federal regulations; and

28 (vi) incentives for improving quality and access to care for difficult to place residents.

1 (b) The department shall establish reimbursement rates for nursing homes that provide a  
 2 differential payment based on costs, acuity of residents served, geographic cost factors, and quality and other  
 3 incentives.

4 (2) In setting medicaid reimbursement rates for assisted living facilities, the department shall  
 5 consider:

6 (a) the actual costs of providing services, including costs associated with quality and safety  
 7 standards;

8 (b) the acuity of the residents served in the facility;

9 (c) inflation; and

10 (d) the need to provide access to assisted living services for persons enrolled in the medicaid  
 11 program.

12

13 **NEW SECTION. Section 5. Inflationary adjustments for nursing homes.** (1) For the fiscal year  
 14 beginning July 1, 2025, medicaid reimbursement rates paid for nursing home services must be increased, at a  
 15 minimum, by an inflation factor equal to the health care cost review skilled nursing facility total market basket  
 16 index published by IHS global insight, or a comparable index if the IHS global insight index is no longer  
 17 published.

18 (2) For the fiscal year beginning July 1, 2027, and every 4 years thereafter, the department shall  
 19 conduct a comprehensive analysis of the cost of providing nursing home services and determine whether  
 20 rebasing the rates is necessary. The department shall report to the children, families, health, and human  
 21 services interim committee and the legislature in accordance with 5-11-210 on the results of the analysis.

22

23 **NEW SECTION. Section 6. Use of nursing home appropriations.** (1) (a) The department may use  
 24 money appropriated to meet the projected medicaid nursing home caseloads only for reimbursements to  
 25 nursing homes.

26 (b) If the actual caseload in a fiscal year is less than the projected caseload, the appropriation may  
 27 be used to increase rates to close the gap between the weighted average medicaid rate paid to nursing homes  
 28 and the actual weighted average costs identified in facility cost reports, indexed forward for inflation.

1 (c) If no gap exists between the rate paid and identified costs, the appropriation may be used for  
2 quality incentives, workforce enhancements, or enhancements and incentives designed to stabilize access to  
3 and improve the quality of nursing home services.

4 (2) Unencumbered funds appropriated to a department division for nursing home services may not  
5 be transferred to another program within the division or to another department division. The unencumbered  
6 money must revert to the fund from which it was appropriated.

7 (3) The department shall report annually to the legislative finance committee in accordance with 5-  
8 11-210 on the status of appropriations for nursing home services.

9

10 **NEW SECTION. Section 7. Inflationary adjustments for assisted living services.** (1) For the fiscal  
11 year beginning July 1, 2025, the department shall increase rates paid for assisted living facility services, at a  
12 minimum, by an inflation factor equal to the consumer price index, U.S. city average, all urban consumers, for  
13 all items, as published by the bureau of labor statistics of the United States department of labor.

14 (2) For the fiscal year beginning July 1, 2027, and every 4 years thereafter, the department shall  
15 conduct a comprehensive analysis of the cost of providing assisted living facility services and determine  
16 whether rebasing the rates is necessary. The department shall report to the children, families, health, and  
17 human services interim committee and the legislature in accordance with 5-11-210 on the results of the  
18 analysis.

19

20 **NEW SECTION. Section 8. Calculation of room and board costs for assisted living facility**  
21 **services.** (1) The department shall, at a minimum, annually adjust the amount that persons enrolled in the  
22 Montana medicaid program must pay for room and board when receiving assisted living facility services.

23 (2) The room and board payment for a person who is categorically eligible for the program must  
24 equal the person's monthly supplemental security income payment minus a \$100 allowance to provide personal  
25 needs funds.

26 (3) (a) The room and board payment for a person who qualifies for the program pursuant to 53-6-  
27 131(1)(e)(ii)(A) must equal the person's countable gross income, minus:

28 (i) the amount of money the person must spend to qualify for medicaid; and

1 (ii) \$100 to provide personal needs funds.

2 (b) After an initial adjustment made pursuant to subsection (3)(a), the department shall adjust the  
3 room and board payments when the amount a person must spend to qualify for medicaid has been increased  
4 or decreased to maintain personal needs funds of \$100.

5 (4) For the fiscal year beginning July 1, 2023, the department shall adjust the room and board  
6 payment levels as provided in this section on July 1, 2023, and on January 1, 2024.

7

8 **Section 9.** Section 53-6-113, MCA, is amended to read:

9 **"53-6-113. Department to adopt rules.** (1) The department shall adopt appropriate rules necessary  
10 for the administration of the Montana medicaid program as provided for in this part and that may be required by  
11 federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act,  
12 42 U.S.C. 1396, et seq., as amended.

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

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

22 (a)(i) the availability of appropriated funds;

23 (b)(ii) the actual cost of services;

24 (c)(iii) the quality of services;

25 (d)(iv) the professional knowledge and skills necessary for the delivery of services; and

26 (e)(v) the availability of services.

27 (b) The department shall adjust the reimbursement rates for nursing homes, as defined in [section  
28 3], in accordance with [sections 4 and 5].

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

2 (a) deliver or direct the delivery of particular services; and

3 (b) deliver services by means of telehealth in accordance with 53-6-122.

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

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

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

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

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

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

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

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

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

28 (7) The department may adopt rules limiting eligibility based on criteria more restrictive than that

1 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  
 2 amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

3 (8) 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) 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) Unless required by federal law or regulation, the department may not adopt rules that exclude a  
 15 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 10. Direction to department of public health and human services.** The  
 19 legislature directs the department of public health and human services to apply for a state plan amendment no  
 20 later than January 1, 2024, to make assisted living facility services currently covered under the big sky waiver a  
 21 service covered under the community first choice option available under the medicaid program.  
 22

23 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be  
 24 codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1  
 25 through 8].  
 26

27 **COORDINATION SECTION. Section 12. Coordination instruction.** If both House Bill No. 110 and  
 28 [this act] are passed and approved, then the reference in [this act] to "legislative finance committee" in [section

1 6(3)] must be changed to "health and human services interim budget committee".

2

3 NEW SECTION. Section 13. Effective dates. (1) Except as provided in subsection (2), [this act] is  
4 effective July 1, 2023.

5 (2) [Section 4(1)(b)] is effective July 1, 2024.

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