

1 SENATE BILL NO. 296

2 INTRODUCED BY B. BEARD, M. MALONE, T. WELCH, C. KEOGH, J. SCHILLINGER, T. RUNNING WOLF,
3 C. KNUDSEN, A. BUCKLEY, D. FERN, S. VINTON, L. REKSTEN, M. CAFERRO, M. THANE, F. SMITH, M.
4 BERTOGLIO, L. BREWSTER, J. DOOLING, M. BINKLEY, B. LER, A. REGIER, K. SEEKINS-CROWE, F.
5 NAVE, R. MARSHALL, E. BUTTREY, D. LOGE, R. FITZGERALD, G. OBLANDER, J. BERGSTROM, T.
6 BROCKMAN, G. PARRY, M. YAKAWICH, B. BROWN, J. SMALL, B. MOLNAR, S. HINEBAUCH, S.
7 FITZPATRICK, M. DUNWELL, D. LENZ, M. LANG, R. MINER, K. ABBOTT, D. EMRICH, J. KASSMIER, B.
8 PHALEN, J. FIELDER, L. DEMING, S. HOWELL, Z. WIRTH, R. KNUDSEN

9
10 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE SENIOR CARE FACILITY ACCESS AND
11 STABILIZATION ACT; ~~REVISING FUNDING LAWS RELATED TO SKILLED NURSING AND ASSISTED~~
12 ~~LIVING FACILITIES;~~ ESTABLISHING PROCEDURES FOR CALCULATING PERSONAL NEEDS
13 ALLOWANCES AND ROOM AND BOARD COSTS FOR ASSISTED LIVING RESIDENTS; ~~REQUIRING~~
14 ~~MONEY APPROPRIATED FOR NURSING HOME SERVICES TO BE USED ONLY FOR THOSE PURPOSES;~~
15 REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURSUE THE
16 COMMUNITY FIRST CHOICE FUNDING OPTION FOR ASSISTED LIVING; ESTABLISHING REPORTING
17 REQUIREMENTS; ~~AMENDING SECTION 53-6-113, MCA;~~ AND PROVIDING AN A DELAYED EFFECTIVE
18 DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 NEW SECTION. Section 1. — **Short title.** ~~{Sections 1 through 8} may be cited as the "Senior Care~~
23 ~~Facility Access and Stabilization Act".~~

24
25 NEW SECTION. Section 2. — **Purpose.** ~~(1) The legislature affirms the importance of providing frail,~~
26 ~~elderly Montanans with quality residential long-term care services that meet health and safety standards and~~
27 ~~are provided close to home, family, and friends.~~

28 ~~(2) — The purposes of {sections 1 through 8} are to :~~

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

3 ~~(b) — ensure that the state takes steps to stabilize medicaid payments to residential long-term care~~
4 ~~facilities to avoid closures of nursing homes and to maintain access to assisted living facilities for those on m~~
5 ~~edicaid;~~

6 ~~(c) — establish standards for setting medicaid rates;~~

7 ~~(d) — provide for inflationary adjustments;~~

8 ~~(e) — clarify uses of legislative appropriations; and~~

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

10

11 ~~**NEW SECTION. Section 3. — Definitions.** As used in [sections 1 through 8], the following definitions~~

12 ~~apply:~~

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

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

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

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

19 ~~(5) — "Residential long-term care services" means assisted living facility services and nursing home~~
20 ~~services.~~

21

22 ~~**NEW SECTION. Section 4. — Medicaid rates for residential long-term care services.** (1) (a) In~~

23 ~~setting medicaid reimbursement rates for nursing homes, the department shall consider:~~

24 ~~(i) — the actual costs of providing the services, including costs associated with quality and safety~~
25 ~~standards;~~

26 ~~(ii) — inflation;~~

27 ~~(iii) — the acuity of the residents served in the facility;~~

28 ~~(iv) — cost factors unique to specific geographic regions, including local or regional labor and housing~~

1 costs and circumstances unique to rural facilities;

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

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

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

7 (2) — In setting medicaid reimbursement rates for assisted living facilities, the department shall
8 consider:

9 (a) — the actual costs of providing services, including costs associated with quality and safety
10 standards;

11 (b) — the acuity of the residents served in the facility;

12 (c) — inflation; and

13 (d) — the need to provide access to assisted living services for persons enrolled in the medicaid
14 program.

15

16 NEW SECTION. Section 5. — Inflationary adjustments for nursing homes. (1) For BEGINNING IN
17 the fiscal year beginning July 1, 2025, medicaid reimbursement rates paid for nursing home services must be
18 increased ANNUALLY, at a minimum, by an inflation factor equal to the health care cost review skilled nursing
19 facility total market basket index published by IHS global insight, or a comparable index if the IHS global insight
20 index is no longer published, BUT IN NO CASE MAY THE MEDICAID REIMBURSEMENT RATE INCREASE UNDER THIS
21 SECTION EXCEED 3%.

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

26

27 NEW SECTION. Section 6. — Use of nursing home appropriations. (1) (a) The department may use
28 money appropriated to meet the projected medicaid nursing home caseloads only for reimbursements to

1 nursing homes.

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

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

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

11 (3) — The department shall report annually to the legislative finance committee in accordance with 5-
12 11-210 on the status of appropriations for nursing home services.

13
14 **NEW SECTION. Section 7. — Inflationary adjustments for assisted living services.** (1) For
15 BEGINNING IN the fiscal year beginning July 1, 2025, the department shall increase rates paid for assisted living
16 facility services ANNUALLY, at a minimum, by an inflation factor equal to the consumer price index, U.S. city
17 average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States
18 department of labor, BUT IN NO CASE MAY THE RATE INCREASE UNDER THIS SECTION EXCEED 3%.

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

24
25 **NEW SECTION. Section 1. Calculation of room and board costs for assisted Assisted living**
26 **facility services -- personal needs allowance -- calculation** CALCULATION OF ROOM AND BOARD COSTS FOR
27 ASSISTED LIVING FACILITY SERVICES. (1) The department shall, at a minimum, annually adjust the amount that
28 persons enrolled in the Montana Medicaid program must pay for room and board when receiving assisted living

1 facility services.

2 ~~(2) PERSONS ELIGIBLE FOR ASSISTED LIVING FACILITY SERVICES ARE ALLOWED A PERSONAL NEEDS~~
3 ~~ALLOWANCE. THE ALLOWANCE MUST BE SET AT \$100 A MONTH ON JULY 1, 2023, AND INCREASED ON JANUARY 1 OF~~
4 ~~EACH SUBSEQUENT CALENDAR YEAR BY THE SAME PERCENTAGE AS THE ANNUAL COST-OF-LIVING ADJUSTMENT MADE TO~~
5 ~~SOCIAL SECURITY BENEFITS PURSUANT TO 42 U.S.C. 415.~~

6 ~~(2)(3)(2)~~ The room and board payment for a person who is categorically eligible for the program
7 must equal the person's monthly supplemental security income payment minus a \$100 allowance to provide
8 personal needs funds ~~THE PERSONAL NEEDS ALLOWANCE~~ A \$100 ALLOWANCE TO PROVIDE PERSONAL NEEDS FUNDS.

9 ~~(3)(4)(3)~~ (a) The room and board payment for a person who qualifies for the program pursuant
10 to 53-6-131(1)(e)(ii)(A) must equal the person's countable gross income, minus:

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

12 (ii) ~~\$100 to provide THE personal needs funds~~ ALLOWANCE \$100 TO PROVIDE PERSONAL NEEDS
13 FUNDS.

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

17 ~~(4)(5)~~ For the fiscal year beginning July 1, ~~2023~~ 2025, the department shall adjust the room and
18 board payment levels as provided in ~~this section~~ SUBSECTIONS (3) AND (4), AS APPROPRIATE, THIS SECTION on July
19 1, ~~2023~~ 2025, and on January 1, ~~2024~~ 2026.

20

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

22 ~~"53-6-113. Department to adopt rules. (1) The department shall adopt appropriate rules necessary~~
23 ~~for the administration of the Montana medicaid program as provided for in this part and that may be required by~~
24 ~~federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act,~~
25 ~~42 U.S.C. 1396, et seq., as amended.~~

26 ~~(2) The department shall adopt rules that are necessary to further define for the purposes of this~~
27 ~~part the services provided under 53-6-101 and to provide that services being used are medically necessary and~~
28 ~~that the services are the most efficient and cost-effective available. The rules may establish the amount, scope,~~

1 and duration of services provided under the Montana medicaid program, including the items and components
2 constituting the services.

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

7 ~~(a)(i) the availability of appropriated funds;~~

8 ~~(b)(ii) the actual cost of services;~~

9 ~~(c)(iii) the quality of services;~~

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

11 ~~(e)(v) the availability of services.~~

12 ~~(b) The department shall adjust the reimbursement rates for nursing homes, as defined in [section~~
13 ~~3] in accordance with [sections 4 and 5].~~

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

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

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

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

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

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

28 ~~(c) The department may not apply financial criteria below \$15,000 for an individual and \$30,000 for~~

1 a couple for resources other than income in determining the eligibility of individuals for the medicaid program for
2 workers with disabilities provided for in 53-6-195.

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

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

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

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

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

13 (7)—— The department may adopt rules limiting eligibility based on criteria more restrictive than that
14 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
15 amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

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

18 (a)—— participation in managed care;

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

20 (c)—— standards for the provision of managed care.

21 (9)—— Subject to subsection (6), the department shall establish by rule income limits for eligibility for
22 extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who
23 lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the
24 department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended
25 medical assistance will be provided. The department, in exercising its discretion to set income limits and
26 duration of assistance, may consider the amount of funds appropriated by the legislature.

27 (10)—— Unless required by federal law or regulation, the department may not adopt rules that exclude a
28 child from medicaid services or require prior authorization for a child to access medicaid services if the child

1 would be eligible for or able to access the services without prior authorization if the child was not in foster care."

2

3 NEW SECTION. Section 2. Direction to department of public health and human services. The
4 legislature directs the department of public health and human services to apply for a state plan amendment no
5 later than January 1, ~~2024~~ 2026, to make assisted living facility services currently covered under the big sky
6 waiver a service covered under the community first choice option available under the medicaid program.

7

8 NEW SECTION. SECTION 3. REPORTING REQUIREMENTS -- BIG SKY WAIVER AND COMMUNITY FIRST CHOICE

9 PROGRAMS. (1) EACH QUARTER OF THE 2027 BIENNIUM, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

10 SHALL REPORT THE FOLLOWING INFORMATION FOR THE PRECEDING QUARTER TO THE HEALTH AND HUMAN SERVICES

11 INTERIM BUDGET COMMITTEE PROVIDED FOR IN 5-12-501:

12 (A) THE AVERAGE NUMBER OF PEOPLE SERVED EACH MONTH THROUGH THE BIG SKY WAIVER AND THE
13 COMMUNITY FIRST CHOICE OPTION ADMINISTERED BY THE DIVISION OVERSEEING LONG-TERM CARE SERVICES;

14 (B) THE AVERAGE NUMBER OF PEOPLE ON THE WAITING LIST FOR THE BIG SKY WAIVER EACH MONTH;

15 (C) ANY CHANGES IN THE NUMBER OF PROVIDERS PARTICIPATING IN THE COMMUNITY FIRST CHOICE
16 OPTION;

17 (D) THE AVERAGE PER-CAPITA EXPENDITURES IN THE BIG SKY WAIVER AND THE COMMUNITY FIRST CHOICE
18 OPTION; AND

19 (E) THE AVERAGE UTILIZATION RATE OF INDIVIDUAL SERVICE PLAN ALLOTMENTS IN THE COMMUNITY FIRST
20 CHOICE OPTION.

21 (2) THE REPORTS MUST BE PROVIDED IN AN ELECTRONIC FORMAT AND PRESENTED TO THE COMMITTEE IN
22 PERSON.

23

24 NEW SECTION. Section 4. Codification instruction. ~~{Sections 1 through 8 }~~ are ~~[SECTION 1]~~ IS
25 intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply
26 to ~~{sections 1 through 8 }~~ [SECTION 1].

27

28 COORDINATION SECTION. Section 12. Coordination instruction. ~~If both House Bill No. 110 and~~

1 ~~[this act] are passed and approved, then the reference in [this act] to "legislative finance committee" in [section~~
2 ~~6(3)] must be changed to "health and human services interim budget committee".~~

3

4 NEW SECTION. Section 5. Effective dates DATE. ~~(1) Except as provided in subsection (2), [this act]~~

5 ~~[THIS ACT] is effective July 1, 2023 2025.~~

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

7 - END -