

SENATE BILL NO. 312

INTRODUCED BY J. WELBORN

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PRESCRIPTION DRUG FORMULARIES TO BE ADOPTED BY THE DEPARTMENT OF LABOR AND INDUSTRY BY RULE; PROVIDING FOR ADOPTION OF A COMMERCIAL DRUG FORMULARY; PROVIDING FOR AUTOMATIC UPDATING OF CERTAIN DRUG FORMULARIES; AMENDING SECTIONS 2-4-302, 2-4-305, 2-4-306, 2-4-307, 39-71-107, 39-71-704, AND 39-71-743, MCA; AND PROVIDING AN 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)(d). 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)(i) 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 pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

- (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and
- (ii) the number of persons affected.

(2) (a) (i) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of publication, a copy of the

1 published proposal notice must be sent to interested persons who have made timely requests to the agency to  
2 be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or  
3 organization or member of those entities who has filed a request with the appropriate administrative rule review  
4 committee when the request has been forwarded to the agency as provided in subsection (2)(b).

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

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

14 (b) The appropriate administrative rule review committee shall forward a list of all organizations or  
15 persons who have submitted a request to be informed of agency actions to the agencies that the committee  
16 oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request  
17 of any person requesting to be added to or deleted from the list.

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

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

24 (A) obtain the legislator's comments;

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

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

30 (ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant

1 to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

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

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

8 (4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons  
9 at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views,  
10 or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed  
11 for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that  
12 opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons  
13 who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate  
14 administrative rule review committee, or by an association having not less than 25 members who will be directly  
15 affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall  
16 schedule an oral hearing.

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

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

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

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

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

29 (8) (a) For purposes of contacting primary sponsors under subsection (2)(d), a current or former  
30 legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail

1 address, and telephone number on file with the secretary of state. The secretary of state may also use legislator  
2 contact information provided by the legislative services division for the purposes of the register. The secretary  
3 of state shall update the contact information whenever the secretary of state receives corrected information from  
4 the legislator or the legislative services division. An agency proposing rules shall consult the register when  
5 providing sponsor contact.

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

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

13

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

15 **"2-4-305. Requisites for validity -- authority and statement of reasons.** (1) (a) The agency shall fully  
16 consider written and oral submissions respecting the proposed rule, including comments submitted by the primary  
17 sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that  
18 initially implements legislation.

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

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

28 (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory  
29 language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate  
30 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 authority  
2 pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must  
3 include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to  
4 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 matter  
6 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 governing  
10 board or commission must include a citation to and description of the policy implemented. Each agency rule  
11 implementing a policy and the policy itself must be based on legal authority and otherwise comply with the  
12 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 and  
14 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 rules  
16 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 agency  
20 adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for  
21 a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement  
22 by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale  
23 for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules.  
24 Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated  
25 for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the  
26 written and oral data, views, comments, or testimony submitted by the public or the agency and considered by  
27 the agency. A statement that merely explains what the rule provides is not a statement of the reasonable  
28 necessity for the rule.

29           (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302,  
30 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the

1 publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial  
2 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of  
3 the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial  
4 compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either  
5 proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be  
6 determined with reference to the latest notice in all cases.

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

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

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

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

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

28

29 **Section 3.** Section 2-4-306, MCA, is amended to read:

30 **"2-4-306. Filing and format -- adoption and effective dates -- dissemination of emergency rules.**

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

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

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

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

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

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

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

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

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

- 1 (i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or  
 2 (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the  
 3 committee members, as communicated in writing to the committee presiding officer and staff, make it comply with  
 4 the committee's objection and concerns.

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

9 (6) This section applies to the department of labor and industry adopting a rule relating to a commercial  
 10 drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department  
 11 of labor and industry rules relating to commercial drug formularies as provided in 39-71-704."  
 12

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

14 **"2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code,  
 15 federal agency rule, rule of any agency of this state, or other similar publication if:

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

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

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

25 (3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection  
 26 (1):

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

29 (ii) must be available to the public for comment, through either publication in the register or publication  
 30 in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or



1 other publication is itself subject to public comment; and

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

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

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

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

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

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

1 page for the ARM is not required.

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

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

7

8 **Section 5.** Section 39-71-107, MCA, is amended to read:

9 **"39-71-107. Insurers to act promptly on claims -- in-state claims examiners -- third-party agents**

10 **-- penalties.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are  
11 necessary to provide appropriate service to injured workers, to employers, and to providers who are the  
12 customers of the workers' compensation system.

13 (2) All workers' compensation and occupational disease claims filed pursuant to the Workers'  
14 Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as  
15 examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine  
16 the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the  
17 claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or  
18 maildrop in Montana does not constitute maintaining an office in Montana.

19 (3) An insurer shall maintain the documents related to each claim filed with the insurer under the  
20 Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until  
21 the claim is settled. The documents may be either original documents or duplicates of the original documents and  
22 must be maintained in a manner that allows the documents to be retrieved from that office and copied at the  
23 request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must  
24 be made available within 48 hours of a request for the file. Electronic or optically imaged documents are  
25 permitted.

26 (4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services  
27 shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

28 (b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply  
29 with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer  
30 to give the required advance notice.

1           (5) (a) Except for those medical benefits provided by a managed care organization or a preferred  
2 provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704~~(4)~~(5), an insurer that uses  
3 a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent  
4 years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate  
5 the payment due based on the Montana workers' compensation medical fee schedules, provided for under  
6 39-71-704, that were in effect on the date the service was provided.

7           (b) Except for those medical benefits provided by a managed care organization or a preferred provider  
8 organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704~~(4)~~(5), an insurer whose agent neglects  
9 or fails to use the proper fee schedule may be assessed a penalty of not less than \$200 or more than \$1,000 for  
10 each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.

11           (c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted  
12 liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than \$200 or more than  
13 \$1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).

14           (6) An insurer shall provide to the claimant:

15           (a) a written statement of the reasons that a claim is being denied at the time of denial;

16           (b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal  
17 an insurer's decision;

18           (c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an  
19 explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the  
20 initial payment of the benefit.

21           (d) a written notice advising the claimant when a change is made to the claims examiner handling the  
22 claim, including the name and contact information of the new claims examiner. The notice must be sent within  
23 14 days of the change in claims examiner.

24           (7) An insurer shall:

25           (a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless  
26 the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying  
27 benefits and specifies the information needed; and

28           (b) pay settlements within 30 days of the date the department issues an order approving the settlement.

29           (8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted  
30 according to department rules. A party may appeal the final agency order to the workers' compensation court.

1 The court shall review the order pursuant to the requirements of 2-4-704.

2 (9) The department may adopt rules to implement this section.

3 (10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered  
4 compromise of benefits between a claimant and an insurer or a claim that was paid in full.

5 (b) The term does not include a claim in which there has been only a lump-sum advance of benefits."  
6

7 **Section 6.** Section 39-71-704, MCA, is amended to read:

8 **"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**

9 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit  
10 separate and apart from compensation benefits actually provided, the following must be furnished:

11 (a) After the happening of a compensable injury or occupational disease and subject to other provisions  
12 of this chapter, the insurer shall furnish reasonable primary medical services, including prescription drugs for  
13 conditions that are a direct result of the compensable injury or occupational disease, for those periods specified  
14 in this section.

15 (b) Subject to the limitations in this chapter, the insurer shall furnish secondary medical services only  
16 upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual  
17 employment.

18 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription  
19 hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out  
20 of and in the course of employment.

21 (d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous  
22 expenses incurred in travel to a health care provider for treatment of an injury pursuant to rules adopted by the  
23 department. Reimbursement must be at the rates allowed for reimbursement for state employees.

24 (ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from  
25 the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for  
26 reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable  
27 for the worker's medical condition. The rules must exclude from reimbursement:

28 (A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by  
29 the insurer pursuant to 39-71-605;

30 (B) travel to a health care provider within the community in which the worker resides;

1 (C) travel outside the community in which the worker resides if comparable medical treatment is available  
2 within the community in which the worker resides, unless the travel is requested by the insurer; and

3 (D) travel for unauthorized treatment or disallowed procedures.

4 (iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel  
5 or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the  
6 travel and treatment were required.

7 (e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured  
8 worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by  
9 the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those  
10 funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred  
11 by the family member or designated person when traveling to be with the injured worker. These funds must be  
12 paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary  
13 for a travel companion to accompany the catastrophically injured worker.

14 (f) (i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis  
15 of an occupational disease. A worker may request reopening of medical benefits that were terminated under this  
16 subsection (1)(f) as provided in 39-71-717.

17 (ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a  
18 compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct  
19 result of a compensable injury or occupational disease.

20 (g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has  
21 achieved medical stability, palliative or maintenance care except:

22 (i) when provided to a worker who has been determined to be permanently totally disabled and for whom  
23 it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically  
24 stationary condition;

25 (ii) when necessary to monitor the status of a prosthetic device; or

26 (iii) when the worker's treating physician believes that the care that would otherwise not be compensable  
27 under this subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is  
28 a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or  
29 maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers'  
30 compensation court has jurisdiction.

1 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice  
2 of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any  
3 medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

4 (2) (a) The department shall annually establish a schedule of fees for medical services that are  
5 necessary for the treatment of injured workers. Regardless of the date of injury, payment for medical services  
6 is based on the fee schedule rates in this section in effect on the date on which the medical service is provided.  
7 Charges submitted by providers must be the usual and customary charges for nonworkers' compensation  
8 patients. The department may require insurers to submit information to be used in establishing the schedule.

9 (b) (i) The department may not set the rate for medical services at a rate greater than 10% above the  
10 average of the conversion factors used by up to the top five insurers or third-party administrators providing group  
11 health insurance coverage within this state who use the resource-based relative value scale to determine fees  
12 for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy  
13 at least 1% of the market share for group health insurance policies as reported annually to the state auditor.

14 (ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their  
15 standard conversion rates to the department.

16 (iii) The department may use the conversion rates only for the purpose of determining average conversion  
17 rates under this subsection (2).

18 (iv) The department shall maintain the confidentiality of the conversion rates.

19 (c) The fee schedule rates established in subsection (2)(b), when adopted, must be based on the  
20 following standards as adopted by the centers for medicare and medicaid services, regardless of where services  
21 are provided:

22 (i) the American medical association current procedural terminology codes, as those codes exist on  
23 January 1 of each year;

24 (ii) the healthcare common procedure coding system, as those codes and their relative weights exist on  
25 January 1 of each year;

26 (iii) the medicare severity diagnosis-related groups, as those codes and their relative weights exist on  
27 January 1 of each year;

28 (iv) the ambulatory payment classifications, as those codes and their relative weights exist on January  
29 1 of each year;

30 (v) the ratio of costs to charges for each hospital, as those codes exist on January 1 of each year;

1 (vi) the national correct coding initiative edits, as those codes exist on January 1 of each year; and  
 2 (vii) the relative value units in the published resource-based relative value scale, as those codes exist  
 3 on January 1 of each year.

4 (d) The department may establish additional codes and coding standards for use by providers when  
 5 billing for medical services under this section.

6 (3) (a) The department shall establish by rule evidence-based utilization and treatment guidelines for  
 7 primary and secondary medical services. There is a rebuttable presumption that the adopted utilization and  
 8 treatment guidelines establish compensable medical treatment for an injured worker.

9 (b) (i) The department may adopt a drug formulary as part of its utilization and treatment guidelines. To  
 10 implement this section, the department may annually adopt by rule an evidence-based commercial or other  
 11 evidence-based drug formulary as part of its utilization and treatment guidelines.

12 (ii) If the department adopts a commercial drug formulary, the formulary automatically includes all of the  
 13 changes and updates furnished by the commercial vendor that are made during the year. This process is  
 14 independent of the provisions of 2-4-307.

15 (iii) If the department adopts a drug formulary, the department shall, by rule, provide for:

16 (A) an appropriate transition of treatment, if the treatment began prior to the adoption of a drug formulary,  
 17 to treatment that is consistent with the application of the formulary; and

18 (B) a timely and responsive dispute resolution process for disputes related to use of the formulary.

19 ~~(b)(c)~~ An insurer is not responsible for treatment or services that do not fall within the utilization and  
 20 treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer.  
 21 If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for  
 22 payment of the medical treatment or services.

23 ~~(c) The department shall hire a medical director. The department may establish by rule an independent~~  
 24 ~~medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to~~  
 25 ~~mediation under 39-71-2401.~~

26 (d) The department, in consultation with health care providers with relevant experience and education,  
 27 shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider  
 28 amendments or changes to the guidelines.

29 (4) The department shall hire a medical director. The department may establish by rule an independent  
 30 medical review process for treatment or services denied by an insurer pursuant to subsection (3) prior to

1 mediation under 39-71-2401.

2 ~~(4)~~(5) For services available in Montana, insurers may pay facilities located outside Montana according  
3 to the workers' compensation fee schedule of the state where the medical service is performed.

4 ~~(5)~~(6) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical  
5 bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the  
6 department by rule.

7 (b) Any unpaid balance under this subsection ~~(5)~~ (6) accrues interest at 12% a year or 1% a month or  
8 a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the  
9 date of receipt of the original billing.

10 ~~(6)~~(7) Once a determination has been made regarding the correct reimbursement amount, any  
11 overpayment made to a health care provider must be reimbursed to the insurer within 30 days of the  
12 determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1%  
13 a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date  
14 of receipt of the determination of the correct reimbursement amount.

15 ~~(7)~~(8) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the  
16 usual and customary charge.

17 ~~(8)~~(9) Payment pursuant to reimbursement agreements between managed care organizations or  
18 preferred provider organizations and insurers is not bound by the provisions of this section.

19 ~~(9)~~(10) After mediation pursuant to department rules, an unresolved dispute between an insurer and a  
20 health care provider regarding the amount of a fee for medical services may be brought before the workers'  
21 compensation court.

22 ~~(10)~~(11) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to  
23 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

24 (b) "Visit", as used in this subsection ~~(10)~~ (11), means each time that the worker obtains services relating  
25 to a compensable injury or occupational disease from:

26 (i) a treating physician;

27 (ii) a physical therapist;

28 (iii) a psychologist; or

29 (iv) hospital outpatient services available in a nonhospital setting.

30 (c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection ~~(10)~~(a) (11)(a)



1 if the visit is for treatment requested by an insurer."  
2

3 **Section 7.** Section 39-71-743, MCA, is amended to read:

4 **"39-71-743. Assignment or attachment of payments.** (1) Payments under this chapter are not  
5 assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

6 (a) as provided in 71-3-1118;

7 (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or  
8 past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established  
9 by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state  
10 law;

11 (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter;

12 (d) as provided in 39-71-742; or

13 (e) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer  
14 whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits.  
15 The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the  
16 injured worker's benefits.

17 (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support  
18 as follows:

19 (a) for any periodic payment, an amount up to the percentage amount established in the guidelines  
20 promulgated by the department of public health and human services pursuant to 40-5-209; or

21 (b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current  
22 child support and a past-due child support obligation.

23 (3) After determination that the claim is covered under the Workers' Compensation Act, the liability for  
24 payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided  
25 in 39-71-704~~(4)~~(11), a fee or charge is not payable by the injured worker for treatment of injuries sustained if  
26 liability is accepted by the insurer."  
27

28 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2017.

29 - END -