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 PERSONAL NEEDS ALLOWANCES AND ROOM AND BOARD COSTS 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 EFFECTIVE DATES AND A TERMINATION 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

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

(c) establish standards for setting medicaid rates;

(d) provide for inflationary adjustments;

(e) clarify uses of legislative appropriations; and

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

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

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

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

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

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

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

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

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

(ii) inflation;

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

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

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

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

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

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

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

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

(c) inflation; and

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

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

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

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

(b) If the actual caseload in a fiscal year is less than the projected caseload, the appropriation may be used to increase rates to close the gap between the weighted average medicaid rate paid to nursing homes

and the actual weighted average costs identified in facility cost reports, indexed forward for inflation.

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

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

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

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

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

NEW SECTION. **Section 8. ~~Calculation of room and board costs for assisted~~ ASSISTED living facility services -- PERSONAL NEEDS ALLOWANCE -- CALCULATION OF ROOM AND BOARD COSTS.** (1) The department shall, at a minimum, annually adjust the amount that persons enrolled in the Montana medicaid program must pay for room and board when receiving assisted living facility services.

(2) PERSONS ELIGIBLE FOR ASSISTED LIVING FACILITY SERVICES ARE ALLOWED A PERSONAL NEEDS ALLOWANCE. THE ALLOWANCE MUST BE SET AT $100 A MONTH ON JULY 1, 2023, AND INCREASED ON JANUARY 1 OF EACH SUBSEQUENT CALENDAR YEAR BY THE SAME PERCENTAGE AS THE ANNUAL COST-OF-LIVING ADJUSTMENT MADE TO

SOCIAL SECURITY BENEFITS PURSUANT TO 42 U.S.C. 415.

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

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

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

(ii) ~~$100 to provide~~ THE personal needs ~~funds~~ ALLOWANCE.

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

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

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

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

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

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

limited to considering:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) participation in managed care;

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

(c) standards for the provision of managed care.

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

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

NEW SECTION. **Section 10. Direction to department of public health and human services.** The legislature directs the department of public health and human services to apply for a state plan amendment no later than January 1, 2024, to make assisted living facility services currently covered under the big sky waiver a

service covered under the community first choice option available under the medicaid program.

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

COORDINATION SECTION. **Section 12. Coordination instruction.** If both House Bill No. 110 and [this act] are passed and approved, then the reference in [this act] to "legislative finance committee" in [section 6(3)] must be changed to "health and human services interim budget committee".

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

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

NEW SECTION. **Section 14. Termination**. [Sections 5(1) and 7(1)] terminate December 31, 2029.

- END -

AMEND