

**Unofficial Draft Copy**

As of: August 12, 2004 (3:02pm)

LC0144

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Children, Families, Health, and Human Services  
Interim Committee

A Bill for an Act entitled: "An Act clarifying the role and the duties of the mental health ombudsman; specifying the rights of the mental health ombudsman to the receipt of protected health care information; providing that the mental health ombudsman is a health oversight agency; providing that certain mental health ombudsman duties are considered directly connected with the administration of Medicaid; amending sections 2-15-210, 50-16-530, 50-16-603, and 53-6-101, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 2-15-210, MCA, is amended to read:

**"2-15-210. Mental health ombudsman.** (1) There is a mental health ombudsman. The ombudsman must be appointed by the governor for a term of 4 years. The ombudsman is attached to the office of the governor for administrative purposes only as provided in 2-15-121. The ombudsman may employ staff to carry out the duties as provided in this section.

(2) The ombudsman shall provide an annual report to the governor and to the legislature, as required by 5-11-210, and may include recommendations regarding the mental health system.

(3) The ombudsman shall represent the interests of individuals with regard to the need for public mental health services, including individuals in transition from public to private services. The ombudsman may not provide a legal advocacy service but may assist individuals who contact the ombudsman in establishing eligibility for medical assistance under medicaid.

(4) The mental health ombudsman duties include:

(a) to receive and investigate complaints;

(b) to investigate on its own motion;

(c) to recommend corrective action;

(d) to engage in activities that may improve the functioning of the public mental health system;

(e) to issue reports concerning its findings and recommendations, if necessary.

(5) The ombudsman shall have access to state and local agency records, including those that are considered confidential. The ombudsman may not disclose confidential records and is subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

~~(4)~~(6) The ombudsman may retain counsel for legal support.

~~(5)~~(7) Names of individuals receiving assistance from the ombudsman and information associated with an individual compiled by the ombudsman in the course of conducting an investigation are confidential and privileged information ~~and may not be disclosed~~ are not subject to discovery, subpoena, or other means of legal compulsion unless a court has determined that certain information is subject to compulsory legal process or discovery because the

party seeking the information has demonstrated that there is a compelling state interest that outweighs the individual's privacy interest or the information is requested pursuant to an investigative subpoena issued under 46-4-301.

(8) The mental health ombudsman is a health oversight agency for the purposes of Title 45, part 164 of the Code of Federal Regulations for accessing protected health care information.

(9) The duties of the mental health ombudsman in subsection (3) are considered directly connected to the administration of Medicaid when the ombudsman is involved in conducting or assisting an investigation or when used to verify income, eligibility, and amounts of medical assistance payment. The department shall provide necessary information in order for the ombudsman to carry out the duties as set forth in subsection (3)."

{ Internal References to 2-15-210:  
53-21-166 x }

**Section 2.** Section 50-16-530, MCA, is amended to read:

**"50-16-530. Disclosure without patient's authorization.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the health care provider not to make the disclosure;
- (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to

report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the office of victims services for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

(7) pursuant to 50-16-712;

(8) to the mental health ombudsman when necessary to perform the ombudsman duties as provided for in 2-15-201; or

~~(8)~~(9) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law."

{Internal References to 50-16-530:  
50-16-525 x}

**Section 3.** Section 50-16-603, MCA, is amended to read:

**"50-16-603. Confidentiality of health care information.**

Health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may not be released except:

(1) for statistical purposes, if no identification of

individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict

with any other provision contained in this part.

(8) to the mental health ombudsman when necessary to perform the ombudsman duties as provided for in 2-15-210."

{Internal References to 50-16-603:

50-16-604 x    50-16-604 x    50-16-605 x }

**Section 4.** Section 53-6-101, MCA, is amended to read:

**"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program and is subject to 2-15-210.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C.

1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(1)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

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- (h) prescribed drugs, dentures, and prosthetic devices;
  - (i) prescribed eyeglasses;
  - (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
  - (k) inpatient psychiatric hospital services for persons under 21 years of age;
  - (l) services of professional counselors licensed under Title 37, chapter 23;
  - (m) hospice care, as defined in 42 U.S.C. 1396d(o);
  - (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
  - (o) services of psychologists licensed under Title 37, chapter 17;
  - (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
  - (q) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- (4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of



assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise

eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a

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cost-effective alternative to services otherwise provided."

{Internal References to 53-6-101:

33-22-303 x	33-22-512 x	33-30-1014 x	50-19-323 x
53-6-113 x	53-6-116 x	53-6-131 x	53-6-131 x
53-21-139 x	53-21-139 x		

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective on passage and approval.

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