

1 *House* JOINT RESOLUTION NO. *101*  
 2 INTRODUCED BY *Problems of Aging Subcommittee*  
 3  
 4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
 5 REPRESENTATIVES OF THE STATE OF MONTANA REPEALING THE STATE  
 6 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AMENDMENT  
 7 TO RULE 46-2.10(18)-S11450 OF THE MONTANA ADMINISTRATIVE  
 8 CODE RELATING TO MEDICAL ASSISTANCE AND NURSING HOME CARE  
 9 PROVIDER REIMBURSEMENT.

10  
 11 WHEREAS, on October 15, 1976, the Montana Department of  
 12 Social and Rehabilitation Services adopted an amendment to  
 13 Rule 46-2.10(18)-S11450 of the Montana Administrative Code  
 14 which effectively provides that skilled nursing home  
 15 providers under Title XIX (Medicaid) must also qualify and  
 16 be certified as providers under Title XVIII (Medicare) of  
 17 the Federal Social Security Act; and

18 WHEREAS, the Montana Supreme Court described how the  
 19 Legislature may constitutionally delegate rulemaking powers  
 20 in Bacus v. Lake County, 138 Mont. 69 (1960) and in City of  
 21 Missoula v. Missoula County, 139 Mont. 256 (1961); and

22 WHEREAS, in Bacus the Court admonished that, "if the  
 23 Legislature fails to prescribe with reasonable clarity the  
 24 limits of power delegated to an administrative agency, or if  
 25 these limits are too broad, its attempt to delegate is a

1 nullity"; and

2 WHEREAS, the authority cited (Sections 71-1511 and  
 3 71-1515 R.C.M. 1947) as the basis for adoption of the  
 4 nursing home care provider reimbursement amendments to MAC  
 5 46-2.10(18)-S11450 is too broad and lacks specificity; and

6 WHEREAS, the Montana Supreme Court recently decided, in  
 7 Patterson v. State of Montana, that failure to state to the  
 8 interested parties the Department's reasons for rejecting  
 9 the considerations urged by the interested parties resulted  
 10 in a regulation which was not legally adopted as required by  
 11 the Montana Administrative Procedure Act and was, therefore,  
 12 void and without legal force and effect; and

13 WHEREAS, in accordance with the provisions of Section  
 14 82-4204(1)(b), R.C.M. 1947, the Department was asked to  
 15 provide a concise statement of the principal reasons for or  
 16 against its adoption of the amendment to Rule MAC  
 17 46-2.10(18)-S11450, incorporating therein its reasons for  
 18 overruling the considerations urged against its adoption,  
 19 but the Department failed to provide such reasons with  
 20 regard to its rulemaking authority.

21  
 22 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
 23 OF REPRESENTATIVES OF THE STATE OF MONTANA:

24 That the nursing home care provider reimbursement  
 25 amendment to Rule 46-2.10(18)-S11450 of the Montana

INTRODUCED BILL

LC 1742/01

- 1 Administrative Code which was adopted on October 15, 1976,
- 2 and became effective November 4, 1976, is repealed.

-End-

## STATE OF MONTANA

REQUEST NO. 633-77  
REVISED

## FISCAL NOTE

Form BD-15

In compliance with a written request received April 6, 19 77, there is hereby submitted a Fiscal Note for HJR 101 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON HJR 101

The original fiscal note indicates that the General Fund expenditure increase due to the proposed legislation is \$447,344 in FY78 and \$514,404 in FY79. Indeed, the total additional cost of the proposed legislation is \$447,344 in FY78 and \$514,404 in FY79; however, only approximately 39% of the increased cost must be borne by the General Fund. The remaining support will come from federal funds.

## DESCRIPTION OF PROPOSED LEGISLATION:

A joint resolution repealing SRS amendments to rule 46-2.10(18)-S11450 of the Montana Administrative Code.

## ASSUMPTIONS:

1. 5% of current skilled nursing caseload could receive Medicare reimbursement if all facilities were Medicare certified.
2. Inflation rates for nursing home care costs for FY78 and FY79 are 12% over 1977 costs. All costs for medical services will increase 9% per year.
3. Caseload increases for the 1979 Biennium will be 3% per year.

## FISCAL IMPACT:

	<u>FY78</u>	<u>FY79</u>
Expenditure increase as a result of proposed legislation*	<u>\$447,344</u>	<u>\$514,404</u>

\* Approximately 39% of the above increased cost must be supported with General Fund monies, or \$173,122 in FY78 and \$200,103 in FY79.

## LONG-RANGE IMPACT:

Passage of this resolution will remove incentive for a skilled facility to seek Medicare Certification. Without Medicare Certification, Medicare will not pay for skilled care, and the Medicaid program will be required to pay for the care. It is estimated that 90% of Medicaid Nursing Home recipients over 65 qualify for Medicare. If the proposed legislation referred to in Section VI passes, it would significantly reduce Medicaid expenditures for Nursing Care.

## TECHNICAL NOTE:

Two proposals at the Federal level have been made to significantly increase nursing home payments under the Medicare program. First, President Ford's budget for FY78 proposed a removal of the limit on the number of days of skilled care Medicare can pay. If this is carried through into President Carter's budget potential annual savings in the Montana Medicaid program could be as much as \$7 million. HR 4006 was introduced in Congress February 24th, and would establish a program of long-term care within Medicare. Montana's total long-term care expenditures under the Medicaid program are about \$20 million per year.

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BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4-11-77