

CHAPTER NO. 276,

HOUSE BILL NO. 238

INTRODUCED BY LUND

BY REQUEST OF THE DEPARTMENT
OF SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	On motion taken from second reading and referred to Committee on Judiciary.
February 1, 1979	Intent statement attached. Committee recommend bill do pass. Report adopted.
February 2, 1979	Printed and placed on members' desks.
February 5, 1979	Second reading, do pass.
February 6, 1979	Considered correctly engrossed.
February 7, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 8, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
March 5, 1979	Committee recommend bill and Statement of Intent be concurrent in as amended. Report adopted.

March 7, 1979	Second reading, concurred in.
March 10, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 12, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.
March 15, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 HOUSE BILL NO. 238
 2 INTRODUCED BY *Frank*
 3 BY REQUEST OF THE DEPARTMENT
 4 OF SOCIAL AND REHABILITATION SERVICES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE
 7 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE
 8 SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE
 9 IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES; AMENDING
 10 SECTION 53-6-111, MCA."

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 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 53-6-111, MCA, is amended to read:

14 "53-6-111. Department charged with general
 15 administration of medical assistance -- adoption of rules to
 16 punish fraud. (1) The department of social and
 17 rehabilitation services is hereby authorized and empowered
 18 to administer and supervise a vendor payment program of
 19 medical assistance under the powers, duties, and functions
 20 provided in chapter 2 of this title, as amended, and as
 21 contemplated by the provisions of Title XIX of the federal
 22 Social Security Act.

23 (2) The department shall adopt rules establishing a
 24 system of penalties and sanctions applicable to providers of
 25 medical assistance services and supplies who engage in

1 fraudulent, abusive, or improper activities. The department
 2 shall define by rule those activities which are fraudulent,
 3 abusive, or improper.

4 (3) The penalties or sanctions imposed include but are
 5 not limited to:

6 (a) required courses of education in the rules
 7 governing the medicaid program;

8 (b) withholding of payments to offset previous
 9 improper payments to a provider;

10 (c) suspension of payments to a provider pending
 11 resolution of a dispute involving fraudulent, abusive, or
 12 improper activities;

13 (d) suspension of participation in the program for a
 14 specified period of time; and

15 (e) permanent termination of participation in the
 16 medical assistance program.

17 (4) The department is entitled to recover from a
 18 provider all amounts paid as a result of fraudulent,
 19 abusive, or improper activities, together with interest at a
 20 rate of 6% per annum from the date of such payment.

21 (5) In all cases in which a penalty or sanction has
 22 been imposed, a provider is entitled to a hearing under the
 23 provisions of Title 2, chapter 4, part 1. The department may
 24 stay the effect of the penalty or sanction pending the
 25 hearing."

HB 238

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HB 0238/02

1 hearing"

-End-

1 STATEMENT OF INTENT RE: HB 238

2
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4 This proposed amendment is intended to be codified as
5 an integral part of MCA, Section 53-6-111. Possible
6 constitutional questions (see Section 4) may arise in regard
7 to this proposal. No adverse fiscal impact will be
8 experienced by the state due to the adoption of this
9 legislation.

10 The intent of House Bill 238 is to allow the Department
11 to define by rule what specific activities in relation to
12 the medical assistance program are fraudulent, abusive or
13 improper and subject to certain penalties.

14 Federal regulations require SRS to suspend or terminate
15 from the Medicaid Program any provider who has also been
16 terminated from the Medicare Program. If the state fails or
17 is unable to do so, it faces the loss of federal financial
18 participation in Medicaid payments to providers who have
19 been suspended or terminated from the Medicare Program. That
20 federal participation amounts to 63 percent of the payments.
21 If the Medicaid Program does not have the authority to
22 suspend or terminate those providers, then we must continue
23 paying them. Without federal funds, we would have to request
24 additional funds from the state's general fund to pay those
25 providers.

1 Other states have met with difficulties concerning the
2 imposition of penalties or sanctions upon abusive providers.
3 In response, some of them have passed legislation similar to
4 that proposed here today. SRS believes House Bill 238 is
5 necessary to prevent the wasteful use of Medicaid funds, to
6 deter possible court challenges in the future, and to enable
7 the state to comply with federal regulations in order to
8 ensure essential federal funding for the proper operation of
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hearing."~~

STATEMENT OF INTENT RE: HB 238

This proposed amendment is intended to be codified as an integral part of MCA Section 53-6-111. Possible constitutional questions (see Section 4) may arise in regard to this proposal. No adverse fiscal impact will be experienced by the state due to the adoption of this legislation.

The intent of House Bill 238 is to allow the Department to define by rule what specific activities in relation to the medical assistance program are fraudulent, abusive or improper and subject to certain penalties.

Federal regulations require SRS to suspend or terminate from the Medicaid Program any provider who has also been terminated from the Medicare Program if the state fails or is unable to do so; it faces the loss of federal financial participation in Medicaid payments to providers who have been suspended or terminated from the Medicare Program that federal participation amounts to 63 percent of the payments. If the Medicaid Program does not have the authority to suspend or terminate those providers, then we must continue paying them. Without federal funds, we would have to request additional funds from the state's general fund to pay those providers.

Other states have met with difficulties concerning the imposition of penalties or sanctions upon abusive providers. In response, some of them have passed legislation similar to that proposed here today. SRS believes House Bill 238 is necessary to prevent the wasteful use of Medicaid funds, to deter possible court challenges in the future, and to enable the state to comply with federal regulations in order to ensure essential federal funding for the proper operation of the Medicaid Program.

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE IT AMENDS SECTION 53-6-111, MCA, TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADOPT RULES IN SUBSECTIONS (2) THROUGH (5).

UNDER PRESENT LAW, SRS HAS EXPRESS RULEMAKING AUTHORITY TO ADMINISTER AND SUPERVISE THE STATE'S MEDICAL ASSISTANCE PROGRAM UNDER TITLE 53 OF THE MCA. THERE IS NO EXPRESS RULEMAKING AUTHORITY FOR THE DEPARTMENT TO ADOPT RULES ESTABLISHING PENALTIES AND SANCTIONS APPLICABLE TO PROVIDERS OF MEDICAL ASSISTANCE SERVICES AND SUPPLIES WHO ENGAGE IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES. THE MONTANA ADMINISTRATIVE PROCEDURE ACT, SECTION 2-4-102(1)(A), MCA, REQUIRES THAT SUBSTANTIVE RULES BE ADOPTED UNDER EXPRESSLY DELEGATED AUTHORITY IN ORDER TO BE VALID.

FEDERAL REGULATIONS REQUIRE THE STATE TO SUSPEND OR TERMINATE FROM THE MEDICAID PROGRAM ANY PROVIDER WHO HAS

1 ALSO BEEN TERMINATED FROM THE MEDICARE PROGRAM OR LOSE
2 FEDERAL FINANCIAL PARTICIPATION IN MEDICAID PAYMENTS TO
3 THOSE PROVIDERS. IF SRS DOES NOT HAVE THE AUTHORITY TO
4 SUSPEND OR TERMINATE THOSE PROVIDERS, THE STATE MUST
5 CONTINUE TO PAY THEM BUT WITHOUT FEDERAL FUNDS WHICH
6 PRESENTLY AMOUNT TO 63 PERCENT OF THE PAYMENTS. ADDITIONAL
7 FUNDS FROM THE STATE'S GENERAL FUND WOULD BE NEEDED TO PAY
8 THOSE PROVIDERS OF MEDICAL ASSISTANCE IN MONTANA.

9 THE INTENT OF THIS BILL IS TO GRANT TO THE DEPARTMENT
10 OF SOCIAL AND REHABILITATION SERVICES EXPRESS AUTHORITY TO
11 ADOPT RULES ESTABLISHING PENALTIES AND SANCTIONS AS
12 ENUMERATED IN SUBSECTIONS (3) THROUGH (5) AND THE
13 FLEXIBILITY TO COMPLY WITH FEDERAL REGULATIONS AND TO ADOPT
14 ADDITIONAL PENALTIES AND SANCTIONS NECESSARY TO PROVIDE
15 UNINTERRUPTED ACCESS TO MEDICAL CARE AND SUPPLIES IN AREAS
16 OF MONTANA WHERE ALTERNATIVE SOURCES ARE UNAVAILABLE.

17 FIRST ADOPTED BY THE SENATE COMMITTEE ON PUBLIC HEALTH,
18 WELFARE AND SAFETY ON MARCH 2, 1979.

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HB 0236/04

1 ~~pending-the-hearing~~"

-End-

March 5, 1979

SENATE STANDING COMMITTEE REPORT
(Public Health, Welfare and Safety)

That House Bill No. 238 be amended as follows:

1. Page 2, line 22.

Following: "sanction"

Strike: "has"

2. Page 2, line 23.

Following: line 22

Strike: "been"

Insert: "may be"

3. Page 2, line 24.

Following: "6."

Strike: remainder of Section 5 in its entirety

March 5, 1979

SENATE COMMITTEE - Public Health, Welfare & Safety

That Statement of Intent Re: House Bill No. 238 be amended:

1. Page 1, line 4.

Following: line 3

Strike: the statement of intent in its entirety

Insert: A statement of intent is required for this bill because it amends Section 53-6-111, MCA to authorize the Department of Social and Rehabilitation Services to adopt rules in Subsections 2 through 5.

Under present law, SRS has express rulemaking authority to administer and supervise the state's medical assistance program under Title 53 of the MCA. There is no express rulemaking authority for the Department to adopt rules establishing penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under expressly delegated authority in order to be valid.

Federal regulations require the state to suspend or terminate from the Medicaid program any provider who has also been terminated from the Medicare program or lose federal financial participation in Medicaid payments to those providers. If SRS does not have the authority to suspend or terminate those providers, the state must continue to pay them but without federal funds which presently amount to 63 percent of the payments. Additional funds from the state's general fund would be needed to pay those providers of medical assistance in Montana.

The intent of this bill is to grant to the Department of Social and Rehabilitation Services express authority to adopt rules establishing penalties and sanctions as enumerated in Subsections 3 through 5 and the flexibility to comply with federal regulations and to adopt additional penalties and sanctions necessary to provide uninterrupted access to medical care and supplies in areas of Montana where alternative sources are unavailable.

First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY on March 2, 1979.