CHAPTER NO. 276____

HOUSE BILL NO. 238

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INTRODUCED BY LUND

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

January 1	L8,	1979		Introduced and referred to Committee on Judiciary.
January 2	29,	1979		Committee recommend bill do pass as amended. Report adopted.
January 3	30,	1979		Printed and placed on members' desks.
January 3	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 SE	ENATE
February	8,	1979		Introduced and referred to Committee on Public Health, Welfare, and Safety.
March 5,	197	79		Committee recommend bill and Statement of Intent be concurred 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.

LC 0720/01

1	HOLLSE BILL NO. 238	1	fraud
2	INTRODUCED BY	2	shall
3	BY REQUEST OF THE DEPARTMENT	3	abusi
4	OF SOCIAL AND REHABILITATION SERVICES	4	
5		5	not_l
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE	6	
7	DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE	ד	00481
8	SANCTIONS ON AND RECOVER PAYMENTS FROM PROVIDERS WHO ENGAGE	8	
9	IN FRAUDULENT, ABUSIVE, OR IMPROPER ACTIVITIES; AMENDING	9	impro
10	SECTION 53-6-111, MCA."	10	
11		11	resol
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	impro
13	Section 1. Section 53-6-111. MCA. is amended to read:	13	
14	"53-6-111. Department charged with general	14	speci
15	administration of medical assistance <u> adoption of rules to</u>	15	
16	<u>punish_fraud• (1)</u> The department of social and	16	medic
17	rehabilitation services is hereby authorized and empowered	17	
18	to administer and supervise a vendor payment program of	16	provi
15	medical assistance under the powers, duties, and functions	19	abusi
20	provided in chapter 2 of this title, as amended, and as	20	<u>rate</u>
21	contemplated by the provisions of Title XIX of the federal	21	
22	Social Security Act.	22	been_
23	[2] The department shall adopt rules establishing a	23	provi
24	system of penalties and sanctions applicable to providers of	24	stax_1
25	medical assistance services and supplies who engage in	25	hearin

1	fraudulent: abusive. or improper activities. The department
2	shall_define_by_rule_those_activities_which_are_fraudulents
3	abusive.or.improper.
4	(3) The penalties or sanctions imposed include but are
5	not limitea 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	<u>1d1 suspension of participation in the program for a</u>
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
16	provider_all_amounts_paid_as_a_result_of_fraudulent.
19	abusives or improper activities, together with interest at a
20	rate of 6% per annum from the date of such payment.
1	15) In all cases in which a penalty or santtion has
22	been imposed, a provider is entitled to a bearing under the
23	provisions of Title 2. chapter 4. part 1. The department may
:4	stay the effect of the penalty or sanction pending the
5	hearing."
	-End- 12 10 5

LC 0720/01

INTRODUCED BILL

HB 0238/02

Approved by Committee on Judiciary

1	HOUSE BILL NO. 238
z	INTRODUCED BY LUND
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: *53-6-111. Department 14 charged with general 15 administration of medical assistance -- adoption of rules to punish___fraud. [1] The department of social and 16 17 renabilitation services is hereby authorized and empowered i 8 to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions 19 20 provided in chapter 2 of this title, as amended, and as 21 contemplated by the provisions of Title XIX of the federal Social Security Act. 22

ì	<u>fraudulents_abusives_or_improper_activitiess_Thedepartment</u>
Z	shall_define_by_rule_those_activities_which_are_fraudulent.
3	abusixes_or_impropers
4	131. The penalties or sanctions imposed include but are
5	not_limited_to:
5	(a) required courses of education in the rules
7	governing_the_medicaid_program:
8	<u>(b)_withboldingofpaymentsto_offset_previous</u>
9	improper_payments_to_a_provider:
10	(c)_suspension_of_payments_to_a_provider_pending
11	resolution_ofa_dispute_involving_fraudulents_abusives_or
12	improper_activitias:
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14	specified_period_of_time:_and
15	19) permanent termination of participation in the
16	esdical_assistance_program.
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20	IHE rate of==6%==per=connus SET_BY_15=30=142_EOBTAX
2 t	DEFILIENCIES from the date of such payment.
22	<u>151_ln_all_cases_in_which_a_penalty_or_sanction_has</u>
23	been_imposed: a_provider_is_entitled_to_a_hearing_underthe
24	provisions_of_litle_2+_chapter_4+ part 1 6+_lbe_department
25	may_stay_the_effect_of_the_penalty_or_sanction_pendingthe

-2- 668 238 SECOND READING HB 0238/02

HB 236

1 bearings"

-End-

-3-

STATEMENT OF INTENT RE: HB 238

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- 3

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.

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.

Federal regulations require SRS to suspend or terminate 14 15 from the Medicaid Program any provider who has also been terminated from the Medicare Program. If the state fails or 16 17 is unable to do so; it faces the loss of federal financial 18 participation in Medicaid payments to providers who have 10 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. In response, some of them have passed legislation similar to 3 4 that proposed here today. SRS believes House Bill 238 is 5 necessary to prevent the wasteful use of Medicaid funds. to deter possible court challenges in the future, and to enable 6 7 the state to comply with federal regulations in order to 8 ensure essential federal funding for the proper operation of

9 the Medicaid Program.

46th Legislature

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HB 0238/03

Approved by Committee

on Judiciary

fraudulent, abusive, or improper activities, The department shall_define_by_rule_those_activities_which_are_fraudulents abusives_or_impropers (3) The penalties or sanctions imposed include but are not_limited_to: (a) required courses of education in the rules <u>ooverning the medicaid program:</u>

- 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:

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- 14 specified period of time: and
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SECOND PRINTING HB 238 -End-SECOND READING

IN FRAUDULENT+ ABUSIVE+ OR IMPROPER ACTIVITIES: AMENDING 9 SECTION 53-6-111. MCA.* 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 Section 1. Section 53-6-111. MCA. is amended to read: 13 with general *53-6-111. Department charged 14 administration of medical assistance -- adoption of rules to 15 department of social and <u>punish___fraud+___(1)</u> The 16 rehabilitation services is hereby authorized and empowered 17 to administer and supervise a vendor payment program of 13 medical assistance under the powers, duties, and functions 19 provided in chapter 2 of this title, as amended, and as 20 contemplated by the provisions of Title XIX of the federal 21 Social Security Act. 22

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

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A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE

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-2-

9 the Medicaid Program.

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HB 238

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HB 0238/03

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2	INTRODUCED BY LUND
3	BY REQUEST OF THE DEPARTMENT
4	OF SOCIAL AND REHABILITATION SERVICES
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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

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2	<pre>shall_define_by_rule_those_activities_which_are_fraudulent.</pre>
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14	specified_period_of_time:_and
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20	INE rate of the refined and set by 15-30-142 for tax
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22	[5]lnallcasesin_which_a_penalty_or_sanction_has
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24	provisions_of_litle_2:_chapter_4: part 1 6. The_department
25	<pre>may_stay_the_effect_of_the_penalty_or_sanctionpendingthe</pre>
	bearing."
	HB 238

-End-THIRD READING

1	STATEMENT OF INTENT RE: HB 238
2	
3	
4	This-proposed-amendment-is-intended-to-becodifiedas
5	enintegralpartofMEA+Saction53-6-111+Possible
6	constitutional-questions-face-Section-4)-may-arise-in-regard
7	toth isproposal Noadversefiscal imp actwillbe
6	experiencedbythestateduetotheadoptionof-this
9	legislation.
10	The-intent-of-Kouse-Bill-238-is-to-ollow-the-Bepsetment
11	to-define-by-rule-what-specific-activitiesinrelationto
12	themedicalassistanceprogram-are-fraudulenty-abusive-or
13	improper-and-subject-to-certain-penaitiesw
14	Federal-regulations-require-SRS-to-suspend-or-terminate
15	from-the-Medicaid-Program-ony-providerwhohasaisobeen
16	terminated-from-the-Medicare-Program#f-the-state-foils-or
17	isunableto-do-sov-it-faces-the-loss-of-federal-financial
18	porticipation-in-Medicaid-paymentstoproviderswhohave
10	been-suspended-or-terminsted-from-the-Medicare-Programs-That
20	federal-participation-amounts-to-63-percent-of-the-payments.
21	IftheMedicaidProgramdoesnothave-the-authority-to
22	suspend-or-terminate-those-providersy-then-we-mustcontinue
23	paying-them=-Without-federal-funds=-wewwwld-have-to-request
24	additionalfunds-from-the-state ^s s-general-fund-to-pay-those
25	providers

1	8ther-states-have-met-with-difficulties-concerningthe
2	imposition-of-penalties-or-sanctions-upon-abusive-providers
3	In-responser-some-of-them-have-passed-legislation-similar-to
4	thetproposedheretodaySR5-believes-House-Bill-238-ie
5	necessary-to-prevent-the-wasteful-use-of-Medicaid-fundsyto
6	deter-possible-court-challenges-in-the-futurer-and-to-enable
7	thestatetocomplywith-federal-regulations-in-order-to
8	ensure-essential-federal-funding-for-the-proper-operation-of
9	the-Medicaid-Programs
10	A_STATEMENT_OF_INTENT_IS_REQUIRED_EOR_INIS_BILL_BECAUSE
11	II_AMENDS_SECTION_53-6-111+_MCA+_IQ_AVINORIZE_INE_DEPARIMENT
12	QE_SOCIAL_AND_REHABILITATIONSERVICESIDADDPIRULESIN
13	SUBSECTIONS_121_THROUGH_151.
14	UNDER_PRESENT.LAWSRS_HAS_EXPRESS_RULEMAKING_AUTHORITY
15	IOADMINISTERAND_SUPERVISE_THE_STATE'S_MEDICAL_ASSISTANCE
16	PROGRAM_UNDER_TITLE_53_DE_THE_NCA+THEREISNDEXPRESS
17	BULEMAKING AUTHOBITY FOR THE DEPARTMENT TO ADOPT RULES
18	ESIABLISHING_PENALTIES_AND_SANCTIONS_APPLICABLE_IO_PROVIDERS
19	DE_MEDICAL_ASSISTANCE_SERVICES_AND_SUPPLIESNHOENGAGEIN
20	EBAUQULENI: ABUSIYE. OB. INCROCER. ACTIVITIES. THE MONTANA
21	AQUINISIBAILYE_PROCEDUBE_ACT+_SECTION2=4=102(11)(A)+HCA+
22	REQUIRESIHATSUBSTANTINE_RULES_BE_ADDPIED_UNDER_EXPRESSLY
23	DELEGATED_AUTHORITY_IN_DROER_ID_BE_YALID.
24	EEDERAL REGULATIONS REQUIRE THE STATE TO SUSPEND OF

25 IERHINAIE__EROH__IHE__HEDICAID__PROGRAM_ANY_PROVIDER_HHO_HAS

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1	ALSO BEEN TERMINATED FROM THE MEDICARE PROGRAM OR LOSE
2	FEDERALFINANCIALPARTICIPATIONINMEDICAIDPAYMENTS_IO
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_ANDUNI_ID_63_PERCENT_DE_IHE_PAYMENTSADDITIONAL
7	FUNDS FROM THE STATE'S GENERAL FUND WOULD BE NEEDED TO PAY
8	THOSE_PROVIDERS.OF_NEDICAL_ASSISTANCE_IN_MONTANA.
9	THE INTENT OF THIS BILL IS TO GRANT TO THE DEPARTMENT
10	OF_SOCIAL_AND_REMABLIIATION_SERVICES_EXPRESSAUTHORITYIO
11	ADOPTRULESESTABLISHINGPENALTIES_AND_SANCTIONSAS
12	ENUMERATED IN SUBSECTIONS (3) THROUGH (5) AND THE
13	FLEXIBILITY TO COMPLY WITH FEDERAL REGULATIONS AND TO ADOPI
14	ADDITIONAL PENALTIES_AND_SANCTIONS_NECESSARY_ID_PROVIDE
15	UNINTERBUPTED_ACCESS_TO_MEDICAL_CARE_AND_SUPPLIES_IN_AREAS
16	OF MONTANA WHERE ALTERNATIVE SOURCES ARE UNAVAILABLE.
17	EIRST ADOPTED BY THE SENATE CONNITTEE ON PUBLIC HEALTHA
18	WELFARE AND SAFETY ON MARCH 2. 1979.

- 3 -

HB 0238/04

1	HOUSE BILL NO. 238
2	INTRODUCED BY LUND
3	BY REQUEST OF THE DEPARTMENT
4	OF SOCIAL AND REHABILITATION SERVICES
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6 A BILL FOR AN ACT ENTITLED: "AN ACT TO EMPOWER THE 7 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO IMPOSE 9 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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24	under_the_provisions_of_litle_2+_chapter_4+_part 1 6+ 165
25	departmentimeyistayitheisffectiofitheiisenaltyicoriisanction

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REFERENCE BILL

HB 0236/04

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-End-

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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 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.