

SENATE BILL 423

Introduced by Lynch, et al.

2/18	Introduced
2/18	Referred to Business & Industry
2/18	First Reading
2/18	Fiscal Note Requested
2/19	Hearing
2/19	Tabled in Committee
2/22	Fiscal Note Received
2/23	Fiscal Note Printed

1 Senate BILL NO. 423  
2 INTRODUCED BY Lynch Antovich  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CERTAIN  
5 LONG-TERM CARE FACILITIES FROM CHARGING MORE FOR SEMIPRIVATE  
6 ROOMS FOR PRIVATELY PAYING RESIDENTS THAN IS PAID BY THE  
7 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR  
8 SEMIPRIVATE ROOMS FOR RESIDENTS PARTICIPATING IN THE MONTANA  
9 MEDICAID PROGRAM; PROVIDING FOR THE POWERS AND DUTIES OF THE  
10 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING  
11 SANCTIONS FOR VIOLATIONS; PROVIDING FOR ENFORCEMENT; AND  
12 PROVIDING AN APPLICABILITY DATE."

13  
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because  
16 [section 4] authorizes the department of social and  
17 rehabilitation services to adopt rules implementing the  
18 provisions of this bill. The legislature intends that the  
19 department may rely upon any of its existing rules requiring  
20 financial reports by nursing homes or may adopt rules  
21 specifically tailored to disclose only the semiprivate room  
22 rates for privately paying and medicaid residents. The  
23 legislature also intends that the department may rely upon  
24 any current audit authority in its rules or may adopt rules  
25 specifically tailored to auditing the room charges and

1 receipts for privately paying and medicaid residents.

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 NEW SECTION. **Section 1. Definitions.** As used in  
5 [sections 2 and 3], the following definitions apply:

6 (1) "Department" means the department of social and  
7 rehabilitation services provided for in 2-15-2201.

8 (2) "Long-term care facility" has the same meaning as  
9 provided in 50-5-101.

10 (3) "Skilled nursing care" has the same meaning as  
11 provided in 50-5-101.

12 NEW SECTION. **Section 2. Room charges for privately**  
13 **paying residents restricted -- reporting requirements --**  
14 **audits.** (1) Subject to [section 3], a long-term care  
15 facility that offers skilled nursing care may not charge a  
16 privately paying resident more for a semiprivate room than  
17 the amount the department authorizes under 53-6-113 for a  
18 semiprivate room for residents of the same facility who are  
19 participants in the Montana medicaid program.

20 (2) Long-term care facilities that are subject to the  
21 provisions of subsection (1) shall report the charges for  
22 privately paying residents and for residents who are  
23 participants in the Montana medicaid program to the  
24 department in accordance with department rules. The  
25 department may conduct audits necessary to determine

compliance with the requirements of this section.

**NEW SECTION. Section 3. Sanctions for violation. (1)**

The department may terminate medicaid reimbursement payments to a long-term care facility that violates the requirements of [section 2(1)]. Termination of payments may be imposed only after notice and an opportunity for hearing in accordance with the contested case procedures of Title 2, chapter 4. The department may, before or after termination proceedings are begun in accordance with this subsection, extend the period of time for reimbursement for services for a period not to exceed 180 days in order to prevent harm to residents of the facility.

(2) A long-term care facility that has charged a privately paying resident for services in violation of [section 2(1)] shall refund the privately paying resident the amount of the charge that is in excess of the department-approved medicaid rate. The refund must be credited to the next monthly billing of the resident or refunded to the resident within 15 days after the long-term care facility receives notice of the excess charge from the department. Failure to refund the excess charge is a violation of this section.

(3) The department may bring an action in the district court of the district in which the violation occurred to enjoin a violation of [section 2(1)] or a violation of this

section. A resident of a long-term care facility who is charged a rate in excess of that allowed by [section 2(1)] or the resident's legal representative may bring an action in the district court of the district in which the violation occurred to enjoin a violation of [section 2(1)] or this section and may include within the action a claim for the refund of any excess charges and reasonable attorney fees.

**NEW SECTION. Section 4. Rulemaking.** The department may adopt rules to implement [sections 1 through 3].

**NEW SECTION. Section 5. Applicability.** [This act] applies to contracts for skilled nursing care at long-term care facilities, as those terms are defined in 50-5-101, entered into or renewed after October 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0423, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** A bill prohibiting certain long-term care facilities from charging more for semiprivate rooms for private-paying patients than is reimbursed for Medicaid patients.

**ASSUMPTIONS:**

**Department of Social and Rehabilitation Services (SRS)**

1. This legislation would require changes in nursing facility audits. Current contract audits of 15 nursing facilities would be expanded in scope at a total cost increase of \$18,625 per year. The remaining 87 nursing facilities would require a limited scope audit. These limited scope audits would require 4.00 FTE (grade 15) with salaries and benefits totalling \$130,208 per year and related operating expenses and equipment totalling \$38,400 in FY94 and \$22,400 in FY95.
2. It is assumed that the contract audits could be matched 50/50 with federal funds because they could be included in the regular Medicaid audit cycle. However, the other 87 facility audits done by the 4.00 FTE (and their related expenses) would not be matchable by federal funds and would be funded with 100% general fund.
3. Legal costs would increase if it were necessary to enforce Section 3 of HB 423. It is estimated that local attorneys would be retained for a total of two cases per year at an annual expense of \$7,500. This would be funded 100% from the general fund.

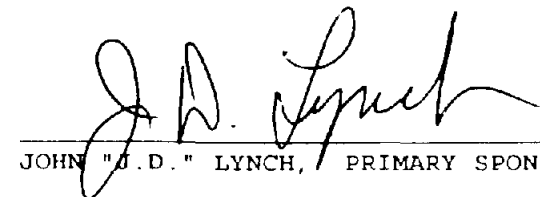
**Department of Corrections (DOC)**

4. Montana Developmental Center, Eastmont and Warm Springs are not impacted by the act.
5. The current Galen nursing home and the Center for the Aged would fall under the act but currently do not charge private pay clients more than the Medicaid payment rates.
6. The Montana Veteran's Home (MVH) would be covered under the act and currently charges \$10.96 per day more than the Medicaid payment rate to 41 private pay clients. (MVH medicaid payment rate = \$61.69 per day; Private pay rate = \$72.65 per day).
7. The act would require the MVH to reduce charges and therefore revenue from private pay clients by \$164,016 (\$10.96 X 41 X 365) per year.
8. The October 1, 1993 effective date of the act would result in loss of 9 months revenue in FY94. This is \$123,012 (\$164,016 X 9/12)
9. Additional general fund would be required to replace the lost private pay revenue.
10. Current law shown in the fiscal note is the executive budget current level recommendation for MVH.

(continued)

 2-23-93

DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/23/93

JOHN "J.D." LYNCH, PRIMARY SPONSOR      DATE

Fiscal Note for SB0423, as introduced

**SB 423**

FISCAL IMPACT:

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	44.50	48.50	4.00	44.50	48.50	4.00
Medicaid Operations	\$5,876,611	\$6,071,344	\$194,733	\$5,996,016	\$6,174,749	\$178,733
<u>Funding:</u>						
General Fund	\$2,362,106	\$2,547,527	\$185,421	\$2,391,742	\$2,561,163	\$169,421
Federal Funds	<u>3,514,505</u>	<u>3,523,817</u>	<u>9,312</u>	<u>3,604,274</u>	<u>3,613,586</u>	<u>9,312</u>
Total	\$5,876,611	\$6,071,344	\$194,733	\$5,996,016	\$6,174,749	\$178,733

Department of Corrections

<u>Funding:</u>						
General Fund	1,154,597	1,277,609	123,012	1,148,846	1,312,862	164,016
State Special Revenue (02023)	1,051,934	928,922	(123,012)	1,082,783	918,767	(164,016)
Federal Revenue	<u>995,440</u>	<u>995,440</u>	<u>0</u>	<u>1,064,902</u>	<u>1,733,558</u>	<u>0</u>
Total	3,201,971	3,201,971	0	3,296,531	3,296,531	0

<u>Net Impact:</u>						
General Fund			308,433			333,437
State Special			(123,012)			(164,016)
Federal Funds			<u>9,312</u>			<u>9,312</u>
Total			194,733			178,733

TECHNICAL NOTES: Federal regulations may prohibit withholding Medicaid reimbursement to nursing facilities for enforcement actions that are not related to Medicaid conditions of participation.