

House BILL NO. 536

INTRODUCED BY

*Norm Smalls, Bill Janna, Spencer Gattuso, William McKee Barnett, Deany*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING THE REQUIREMENTS FOR SALE OF PRESCRIPTION DRUGS BY OUT-OF-STATE MAIL SERVICE PHARMACIES TO MEMBERS OF A GROUP HEALTH INSURANCE CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF PHARMACY REGARDING OUT-OF-STATE MAIL SERVICE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the board of pharmacy authority to adopt administrative rules for the registration of out-of-state mail service pharmacies.

It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664, Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] is specifically intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their states of domicile through registration, rather than licensure, by the state of Montana.

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

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. **Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare



1 under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is  
 2 a participant in another group plan with substantially the same or greater benefits at an equivalent cost or  
 3 unless the member is employed and, by virtue of that employment, is eligible to participate in another group  
 4 plan with substantially the same or greater benefits at an equivalent cost;

5 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is  
 6 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is  
 7 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is  
 8 eligible for equivalent insurance coverage as provided in subsection (1)(a);

9 (c) the surviving children of a member to remain members of the group as long as they are eligible  
 10 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent  
 11 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment  
 12 of a surviving parent or legal guardian.

13 (2) An insurance contract or plan issued ~~after June 30, 1983,~~ under this part must contain the  
 14 provisions of subsection (1) for remaining a member of the group and also must permit:

15 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

16 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

17 (c) continued membership in the group by anyone eligible under the provisions of this section,  
 18 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

19 (3) (a) A state insurance contract or plan ~~issued after August 31, 1991,~~ must contain provisions  
 20 that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible  
 21 for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the  
 22 legislator:

23 (i) terminates service in the legislature and is a vested member of a state retirement system  
 24 provided by law; and

25 (ii) notifies the department of administration in writing within 90 days of the end of ~~his~~ the  
 26 legislator's legislative term.

27 (b) A former legislator may not remain a member of the group plan under the provisions of  
 28 subsection (3) if the person:

29 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

30 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan

1 with substantially the same or greater benefits at an equivalent cost.

2 (c) A legislator who remains a member of the group under the provisions of subsection (3) and  
3 subsequently terminates membership may not rejoin the group unless the person again serves as a  
4 legislator.

5 (4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay  
6 the full premium for coverage and for that of the person's covered dependents.

7 (5) An insurance contract or plan issued under this part ~~after June 30, 1993~~, that provides for the  
8 dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

9 (a) must permit any member of a group to obtain prescription drugs from a pharmacy located in  
10 Montana that is willing to match the price charged to the group or plan and to meet all terms and  
11 conditions, including the same administrative, financial, and professional requirements that are met by the  
12 mail service pharmacy for a drug, without financial penalty to the member; and

13 (b) may only be with an out-of-state mail service pharmacy that is ~~licensed by~~ registered with the  
14 board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."  
15

16 **Section 2.** Section 37-7-701, MCA, is amended to read:

17 "**37-7-701. Legislative declaration.** The legislature recognizes that with the proliferation of alternate  
18 methods of health care delivery, there has arisen among third-party ~~payers~~ payors and insurance companies  
19 the desire to control the cost and ~~utilization~~ use of pharmacy services through a variety of mechanisms,  
20 including the use of mail service pharmacies located outside this state. As a result, the legislature finds and  
21 declares that to continue to protect the consumer-patients of this state, all out-of-state mail service  
22 pharmacies that provide services to this state's residents must be ~~licensed~~ registered with the board, shall  
23 disclose specific information about their services, shall meet the same standards for utilization of  
24 technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence."  
25

26 **Section 3.** Section 37-7-703, MCA, is amended to read:

27 "**37-7-703. License Registration requirements.** Each out-of-state mail service pharmacy must be  
28 ~~licensed by~~ registered with the board of pharmacy. In order to be ~~licensed by~~ registered with the board to  
29 do business in this state and for annual renewal of its ~~license~~ registration, an out-of-state mail service  
30 pharmacy:

1 (1) (a) ~~must be~~ shall submit a certificate from the appropriate licensing authority with which it is  
 2 currently licensed and in good standing in the state in which its dispensing facilities are located; and

3 (b) shall comply with all applicable laws, regulations, and standards of that state and the United  
 4 States and, if requested by the board, provide evidence that it has so complied;

5 (2) shall ~~submit an application in form and content as determined by~~ register with the board,  
 6 ~~including and provide~~ information on ownership and location, including the names and titles of the corporate  
 7 officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in  
 8 which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from  
 9 the out-of-state mail service pharmacy;

10 (3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the  
 11 state where the mail service pharmacy is located. ~~Any plan that has a ratio of technicians to pharmacists~~  
 12 ~~greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be~~ If  
 13 the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for  
 14 determining the number of pharmacy technicians compounding or dispensing drugs at the pharmacy, then  
 15 the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive  
 16 person at any one time in the compounding or dispensing of prescription drugs, unless approved by the  
 17 board as provided in 37-7-307 through 37-7-309.

18 (4) shall ~~register each pharmacist identified under subsection (2) with~~ submit to the board, ~~with~~  
 19 proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is  
 20 employed and ~~with~~ the pharmacist's written commitment to comply with the utilization plan, if any, for each  
 21 pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone  
 22 service referenced in 37-7-706 in order to comply with all information requests by the board; and

23 (5) shall pay an initial ~~license~~ registration fee and annual renewal fee in an amount to be determined  
 24 by the board."

25  
 26 **NEW SECTION. Section 4. Rulemaking authority.** The board of pharmacy may adopt rules to  
 27 implement this part.

28  
 29 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an  
 30 integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7, apply to

1 [section 4].

2

3 NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

8 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0536, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act revising the laws relating to out-of-state mail service pharmacies; specifying the requirements for sale of prescription drugs by out-of-state mail service pharmacies to members of a group health insurance contract or plan for a unit of state or local government; removing licensing of requiring registration of out-of-state mail service pharmacies; specifying registration requirements; granting rule making authority to the Board of Pharmacy regarding out-of-state mail service pharmacies.

ASSUMPTIONS:

1. The number of registrants for out-of-state mail service pharmacies is expected to be 100. Costs associated with rule-making and implementation of this program will be absorbed in the Executive Budget for the 1997 Biennium.
2. Fees for an expected 100 out-of-state mail service pharmacies will be set commensurate with costs and is expected to be \$200 for initial registration and \$100 for annual renewal.

FISCAL IMPACT: Department of Commerce

Revenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Registration Fees	2,000	0
Renewal Fees	0	1,000
Total	2,000	1,000
Pharmacy SSR (02)	2,000	1,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The requirement for a one-to-one ratio of technicians to pharmacists in out-of-state mail order pharmacies may result in fewer bidders and potentially higher costs for state group insurance benefits.

*Dave Lewis* 2-15-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

NORM MILLS, PRIMARY SPONSOR      DATE

Fiscal Note for HB536, as introduced  
**HB 536**

STATE OF MONTANA - FISCAL NOTE

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ASSUMPTIONS:

1. The number of registrants for out-of-state mail service pharmacies is expected to be 100. Costs associated with rule-making and implementation of this program will be absorbed in the Executive Budget for the 1997 Biennium.
2. Fees for an expected 100 out-of-state mail service pharmacies will be set commensurate with costs and is expected to be \$200 for initial registration and \$100 for annual renewal.

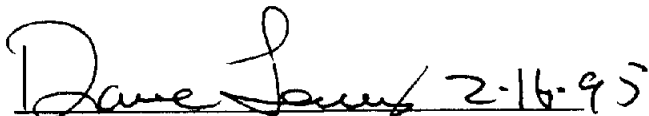
FISCAL IMPACT: Department of Commerce


Revenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Registration Fees	20,000	0
Renewal Fees	0	10,000
Total	20,000	10,000
Pharmacy SSR (02)	20,000	10,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The requirement for a one-to-one ratio of technicians to pharmacists in out-of-state mail order pharmacies may result in fewer bidders and potentially higher costs for state group insurance benefits.

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

  
NORM MILLS, PRIMARY SPONSOR      DATE  
Fiscal Note for HB536, as introduced

HB 536-#2

## 1 HOUSE BILL NO. 536

2 INTRODUCED BY MILLS, ELLIS, SIMON, SQUIRES, BARTLETT, BOHLINGER, MCKEE, BARNETT,  
3 DENNY, COCCHIARELLA

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL  
6 SERVICE PHARMACIES; SPECIFYING THE REQUIREMENTS FOR SALE OF PRESCRIPTION DRUGS BY  
7 OUT-OF-STATE MAIL SERVICE PHARMACIES TO MEMBERS OF A GROUP HEALTH INSURANCE  
8 CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND  
9 REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION  
10 REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF PHARMACY REGARDING  
11 OUT-OF-STATE MAIL SERVICE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703,  
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because the bill gives the board of pharmacy authority  
16 to adopt administrative rules for the registration of out-of-state mail service pharmacies.

17 It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664,  
18 Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy  
19 to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] is specifically  
20 intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce  
21 the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for  
22 regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their  
23 states of domicile through registration, rather than licensure, by the state of Montana.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26  
27 **Section 1.** Section 2-18-704, MCA, is amended to read:

28 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must  
29 contain provisions that permit:

30 (a) the member of a group who retires from active service under the appropriate retirement



1 provisions provided by law to remain a member of the group until the member becomes eligible for medicare  
 2 under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is  
 3 a participant in another group plan with substantially the same or greater benefits at an equivalent cost or  
 4 unless the member is employed and, by virtue of that employment, is eligible to participate in another group  
 5 plan with substantially the same or greater benefits at an equivalent cost;

6 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is  
 7 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is  
 8 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is  
 9 eligible for equivalent insurance coverage as provided in subsection (1)(a);

10 (c) the surviving children of a member to remain members of the group as long as they are eligible  
 11 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent  
 12 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment  
 13 of a surviving parent or legal guardian.

14 (2) An insurance contract or plan issued ~~after June 30, 1983,~~ under this part must contain the  
 15 provisions of subsection (1) for remaining a member of the group and also must permit:

16 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

17 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

18 (c) continued membership in the group by anyone eligible under the provisions of this section,  
 19 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

20 (3) (a) A state insurance contract or plan ~~issued after August 31, 1991,~~ must contain provisions  
 21 that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible  
 22 for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the  
 23 legislator:

24 (i) terminates service in the legislature and is a vested member of a state retirement system  
 25 provided by law; and

26 (ii) notifies the department of administration in writing within 90 days of the end of ~~his~~ the  
 27 legislator's legislative term.

28 (b) A former legislator may not remain a member of the group plan under the provisions of  
 29 subsection (3) if the person:

30 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

1 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan  
2 with substantially the same or greater benefits at an equivalent cost.

3 (c) A legislator who remains a member of the group under the provisions of subsection (3) and  
4 subsequently terminates membership may not rejoin the group unless the person again serves as a  
5 legislator.

6 (4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay  
7 the full premium for coverage and for that of the person's covered dependents.

8 (5) An insurance contract or plan issued under this part ~~after June 30, 1993~~, that provides for the  
9 dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

10 (a) must permit any member of a group to obtain prescription drugs from a pharmacy located in  
11 Montana that is willing to match the price charged to the group or plan and to meet all terms and  
12 conditions, including the same administrative, financial, and professional requirements that are met by the  
13 mail service pharmacy for a drug, without financial penalty to the member; and

14 (b) may only be with an out-of-state mail service pharmacy that is ~~licensed by~~ registered with the  
15 board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."  
16

17 **Section 2.** Section 37-7-701, MCA, is amended to read:

18 **"37-7-701. Legislative declaration.** The legislature recognizes that with the proliferation of alternate  
19 methods of health care delivery, there has arisen among third-party ~~payors~~ payors and insurance companies  
20 the desire to control the cost and ~~utilization~~ use of pharmacy services through a variety of mechanisms,  
21 including the use of mail service pharmacies located outside this state. As a result, the legislature finds and  
22 declares that to continue to protect the consumer-patients of this state, all out-of-state mail service  
23 pharmacies that provide services to this state's residents must be ~~licensed~~ registered with the board, shall  
24 disclose specific information about their services, shall meet the same standards for utilization of  
25 technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence."  
26

27 **Section 3.** Section 37-7-703, MCA, is amended to read:

28 **"37-7-703. License Registration requirements.** Each out-of-state mail service pharmacy must be  
29 ~~licensed by~~ registered with the board of pharmacy. In order to be ~~licensed by~~ registered with the board to  
30 do business in this state and for annual renewal of its ~~license~~ registration, an out-of-state mail service

1 pharmacy:

2 (1) (a) ~~must be~~ shall submit a certificate from the appropriate licensing authority with which it is  
3 currently licensed and in good standing in the state in which its dispensing facilities are located; and

4 (b) shall comply with all applicable laws, regulations, and standards of that state and the United  
5 States and, if requested by the board, provide evidence that it has so complied;

6 (2) shall ~~submit an application in form and content as determined by~~ register with the board,  
7 ~~including and provide~~ information on ownership and location, ~~including the names and titles of the corporate~~  
8 ~~officers,~~ of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in  
9 which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from  
10 the out-of-state mail service pharmacy;

11 (3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the  
12 state where the mail service pharmacy is located. ~~Any plan that has a ratio of technicians to pharmacists~~  
13 ~~greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be~~ If  
14 the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for  
15 determining the number of pharmacy technicians compounding or dispensing drugs at the pharmacy, then  
16 the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive  
17 person at any one time in the compounding or dispensing of prescription drugs, unless approved by the  
18 board as provided in 37-7-307 through 37-7-309.

19 (4) shall ~~register each pharmacist identified under subsection (2) with~~ submit to the board, ~~with~~  
20 proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is  
21 employed and ~~with~~ the pharmacist's written commitment to comply with the utilization plan, if any, for each  
22 pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone  
23 service referenced in 37-7-706 in order to comply with all information requests by the board; and

24 (5) shall pay an initial ~~license~~ registration fee and annual renewal fee in an amount to be determined  
25 by the board; AND

26 (6) SHALL PROVIDE ORAL PHARMACEUTICAL CONSULTATION, AS PROVIDED IN 37-7-706, TO  
27 THE PERSON TO WHOM THE PRESCRIPTION IS BEING SENT AND SHALL DOCUMENT AND MAINTAIN  
28 FOR A REASONABLE LENGTH OF TIME A RECORD OF THE PHARMACEUTICAL CONSULTATION."

29

30 NEW SECTION. Section 4. Rulemaking authority. The board of pharmacy may adopt rules to

1 implement this part.

2  
3 **NEW SECTION. Section 5. Codification instruction.** [Section 4] is intended to be codified as an  
4 integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7, apply to  
5 [section 4].

6  
7 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11  
12 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

13 -END-

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8 CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND  
9 REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION  
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28 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must  
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30 (a) the member of a group who retires from active service under the appropriate retirement

1 provisions provided by law to remain a member of the group until the member becomes eligible for medicare  
2 under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is  
3 a participant in another group plan with substantially the same or greater benefits at an equivalent cost or  
4 unless the member is employed and, by virtue of that employment, is eligible to participate in another group  
5 plan with substantially the same or greater benefits at an equivalent cost;

6 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is  
7 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is  
8 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is  
9 eligible for equivalent insurance coverage as provided in subsection (1)(a);

10 (c) the surviving children of a member to remain members of the group as long as they are eligible  
11 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent  
12 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment  
13 of a surviving parent or legal guardian.

14 (2) An insurance contract or plan issued ~~after June 30, 1983,~~ under this part must contain the  
15 provisions of subsection (1) for remaining a member of the group and also must permit:

16 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

17 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

18 (c) continued membership in the group by anyone eligible under the provisions of this section,  
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20 (3) (a) A state insurance contract or plan ~~issued after August 31, 1991,~~ must contain provisions  
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23 legislator:

24 (i) terminates service in the legislature and is a vested member of a state retirement system  
25 provided by law; and

26 (ii) notifies the department of administration in writing within 90 days of the end of ~~his~~ the  
27 legislator's legislative term.

28 (b) A former legislator may not remain a member of the group plan under the provisions of  
29 subsection (3) if the person:

30 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

1 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan  
2 with substantially the same or greater benefits at an equivalent cost.

3 (c) A legislator who remains a member of the group under the provisions of subsection (3) and  
4 subsequently terminates membership may not rejoin the group unless the person again serves as a  
5 legislator.

6 (4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay  
7 the full premium for coverage and for that of the person's covered dependents.

8 (5) An insurance contract or plan issued under this part ~~after June 30, 1993~~, that provides for the  
9 dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

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11 Montana that is willing to match the price charged to the group or plan and to meet all terms and  
12 conditions, including the same administrative, financial, and professional requirements that are met by the  
13 mail service pharmacy for a drug, without financial penalty to the member; and

14 (b) may only be with an out-of-state mail service pharmacy that is ~~licensed by~~ registered with  
15 board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."  
16

17 **Section 2.** Section 37-7-701, MCA, is amended to read:

18 **"37-7-701. Legislative declaration.** The legislature recognizes that with the proliferation of  
19 alternate methods of health care delivery, there has arisen among third-party ~~payers~~ payors and insurance  
20 companies the desire to control the cost and ~~utilization~~ use of pharmacy services through a variety of  
21 mechanisms, including the use of mail service pharmacies located outside this state. As a result, the  
22 legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state  
23 mail service pharmacies that provide services to this state's residents must be ~~licensed~~ registered with the  
24 board, shall disclose specific information about their services, shall meet the same standards for utilization  
25 of technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence."  
26

27 **Section 3.** Section 37-7-703, MCA, is amended to read:

28 **"37-7-703. License Registration requirements.** Each out-of-state mail service pharmacy must be  
29 ~~licensed by~~ registered with the board of pharmacy. In order to be ~~licensed by~~ registered with the board to  
30 do business in this state and for annual renewal of its ~~license~~ registration, an out-of-state mail service

1 pharmacy:

2 (1) (a) ~~must be~~ shall submit a certificate from the appropriate licensing authority with which it is  
3 currently licensed and in good standing in the state in which its dispensing facilities are located; and

4 (b) shall comply with all applicable laws, regulations, and standards of that state and the United  
5 States and, if requested by the board, provide evidence that it has so complied;

6 (2) ~~shall submit an application in form and content as determined by~~ register with the board,  
7 including and provide information on ownership and location, including the names and titles of the corporate  
8 officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in  
9 which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from  
10 the out-of-state mail service pharmacy;

11 (3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the  
12 state where the mail service pharmacy is located. ~~Any plan that has a ratio of technicians to pharmacists~~  
13 ~~greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be~~ If  
14 the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for  
15 determining the number of pharmacy technicians OR OTHERWISE DEFINE THE ROLE OF THE PHARMACIST  
16 IN compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not  
17 allow a pharmacist to supervise more than one supportive person at any one time in the compounding or  
18 dispensing of prescription drugs, unless approved by the board as provided in 37-7-307 through 37-7-309.

19 (4) ~~shall register each pharmacist identified under subsection (2) with~~ submit to the board, ~~with~~  
20 proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is  
21 employed and ~~with~~ the pharmacist's written commitment to comply with the utilization plan, if any, for each  
22 pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone  
23 service referenced in 37-7-706 in order to comply with all information requests by the board; and AND

24 (5) shall pay an initial ~~license~~ registration fee and annual renewal fee in an amount to be determined  
25 by the board. ~~AND.~~

26 ~~(6) SHALL PROVIDE ORAL PHARMACEUTICAL CONSULTATION, AS PROVIDED IN 37-7-706, TO~~  
27 ~~THE PERSON TO WHOM THE PRESCRIPTION IS BEING SENT AND SHALL DOCUMENT AND MAINTAIN~~  
28 ~~FOR A REASONABLE LENGTH OF TIME A RECORD OF THE PHARMACEUTICAL CONSULTATION."~~

29

30 NEW SECTION. Section 4. Rulemaking authority. The board of pharmacy may adopt rules to



1 implement this part.

2

3 NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an  
4 integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7, apply to  
5 [section 4].

6

7 NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11

12 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

13

-END-

## 1 HOUSE BILL NO. 536

2 INTRODUCED BY MILLS, ELLIS, SIMON, SQUIRES, BARTLETT, BOHLINGER, MCKEE, BARNETT,  
3 DENNY, COCCHIARELLA

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL  
6 SERVICE PHARMACIES; SPECIFYING THE REQUIREMENTS FOR SALE OF PRESCRIPTION DRUGS BY  
7 OUT-OF-STATE MAIL SERVICE PHARMACIES TO MEMBERS OF A GROUP HEALTH INSURANCE  
8 CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT; REMOVING LICENSING OF AND  
9 REQUIRING REGISTRATION OF OUT-OF-STATE MAIL SERVICE PHARMACIES; SPECIFYING REGISTRATION  
10 REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF PHARMACY REGARDING  
11 OUT-OF-STATE MAIL SERVICE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703,  
12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13  
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because the bill gives the board of pharmacy authority  
16 to adopt administrative rules for the registration of out-of-state mail service pharmacies.

17 It is the intent of the legislature to correct a deficiency in Title 37, chapter 7, part 7 (Chapter 664,  
18 Laws of 1991), that arose from a defective attempt to grant rulemaking authority to the board of pharmacy  
19 to carry out the provisions regarding out-of-state mail service pharmacies. [Section 4] is specifically  
20 intended to grant rulemaking authority to the board of pharmacy to carry out the purpose and to enforce  
21 the provisions of Title 37, chapter 7, part 7. Sections 37-7-701 and 37-7-703 are intended to provide for  
22 regulation of out-of-state pharmacies and pharmacists through recognition of the licenses issued by their  
23 states of domicile through registration, rather than licensure, by the state of Montana.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26  
27 **Section 1.** Section 2-18-704, MCA, is amended to read:

28 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must  
29 contain provisions that permit:

30 (a) the member of a group who retires from active service under the appropriate retirement

1 provisions provided by law to remain a member of the group until the member becomes eligible for medicare  
 2 under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is  
 3 a participant in another group plan with substantially the same or greater benefits at an equivalent cost or  
 4 unless the member is employed and, by virtue of that employment, is eligible to participate in another group  
 5 plan with substantially the same or greater benefits at an equivalent cost;

6 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is  
 7 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is  
 8 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is  
 9 eligible for equivalent insurance coverage as provided in subsection (1)(a);

10 (c) the surviving children of a member to remain members of the group as long as they are eligible  
 11 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent  
 12 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment  
 13 of a surviving parent or legal guardian.

14 (2) An insurance contract or plan issued ~~after June 30, 1983~~, under this part must contain the  
 15 provisions of subsection (1) for remaining a member of the group and also must permit:

16 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

17 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

18 (c) continued membership in the group by anyone eligible under the provisions of this section,  
 19 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

20 (3) (a) A state insurance contract or plan ~~issued after August 31, 1991~~, must contain provisions  
 21 that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible  
 22 for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the  
 23 legislator:

24 (i) terminates service in the legislature and is a vested member of a state retirement system  
 25 provided by law; and

26 (ii) notifies the department of administration in writing within 90 days of the end of ~~his~~ the  
 27 legislator's legislative term.

28 (b) A former legislator may not remain a member of the group plan under the provisions of  
 29 subsection (3) if the person:

30 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

1 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan  
2 with substantially the same or greater benefits at an equivalent cost.

3 (c) A legislator who remains a member of the group under the provisions of subsection (3) and  
4 subsequently terminates membership may not rejoin the group unless the person again serves as a  
5 legislator.

6 (4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay  
7 the full premium for coverage and for that of the person's covered dependents.

8 (5) An insurance contract or plan issued under this part ~~after June 30, 1993~~, that provides for the  
9 dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

10 (a) must permit any member of a group to obtain prescription drugs from a pharmacy located in  
11 Montana that is willing to match the price charged to the group or plan and to meet all terms and  
12 conditions, including the same administrative, financial, and professional requirements that are met by the  
13 mail service pharmacy for a drug, without financial penalty to the member; and

14 (b) may only be with an out-of-state mail service pharmacy that is ~~licensed by~~ registered with the  
15 board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."  
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