

SENATE BILL NO. 236

INTRODUCED BY

Waterman Cobb

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601, 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

1 The legislature intends that the department of social and rehabilitation services adopt rules that are
2 reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue
3 hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and
4 policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should
5 include but are not limited to rules addressing the following:

6 (1) a description of the circumstances considered to constitute an undue hardship;

7 (2) the procedures by which an individual may seek an undue hardship exception;

8 (3) the persons entitled to an undue hardship exception; and

9 (4) whether the exception is partial or temporary and the circumstances under which partial or
10 temporary exceptions may be granted.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Definitions.** As used in this part, unless expressly provided otherwise,
15 the following definitions apply:

16 (1) "Department" means the department of social and rehabilitation services provided for in
17 2-15-2201.

18 (2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible
19 for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who
20 has received benefits, whether or not that person has been determined to be eligible.

21 (3) "Recoverable medical assistance" means a payment pursuant to this part, including but not
22 limited to a payment made for items or services provided to and insurance premiums, deductibles, and
23 coinsurance paid on behalf of a recipient who:

24 (a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility
25 for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the
26 department determined under [section 8] that the person was not reasonably expected to be discharged
27 and return home; or

28 (b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended,
29 when the item or service was provided or when the insurance premium, deductible, or coinsurance was
30 paid.

1 (4) "Recovery" means legal action brought for the payment or repayment of recoverable medical
2 assistance or amounts of money paid for other purposes.

3
4 **NEW SECTION. Section 2. Period of ineligibility for medical assistance when assets disposed of**
5 **for less than fair market value -- undue hardship exception -- department to adopt rules.** (1) The
6 department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal
7 regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance
8 under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any
9 assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42
10 U.S.C. 1396p, as may be amended, or by other federal law.

11 (2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient
12 under this section to the extent that the department determines, in accordance with procedures specified
13 by department rule, that the denial of eligibility would cause an undue hardship as defined by department
14 rule.

15 (3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
16 amended, and that implement federal regulations and policies to implement this section. The rules adopted
17 under this section must include but are not limited to rules addressing the following:

- 18 (a) a description of the circumstances considered to constitute an undue hardship;
- 19 (b) the procedures by which an individual may seek an undue hardship exception;
- 20 (c) the persons entitled to an undue hardship exception; and
- 21 (d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of
22 an undue hardship exception.

23 (4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended
24 to prohibit the department from adopting rules consistent with federal law that provide for a period of
25 ineligibility for public assistance programs other than medical assistance when an applicant or recipient
26 directly or indirectly disposes of assets for less than fair market value.

27
28 **Section 3.** Section 53-6-143, MCA, is amended to read:

29 **"53-6-143. Limitations on Medical assistance liens and recoveries.** (1) ~~An~~ Except as provided in
30 this section, the department may not impose a lien upon the property of an applicant for or recipient of

1 ~~medical assistance may not be required to execute an agreement creating a lien on his real property.~~

2 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
3 against the real or personal property of ~~an individual~~ a medicaid applicant or recipient prior to ~~his~~ the
4 applicant's or recipient's death for recovery of medical assistance paid or to be paid on his behalf under
5 ~~this chapter~~ only:

6 (a) pursuant to a judgment of a court for recovery of medical assistance ~~incorrectly~~ paid on behalf
7 of the recipient; ~~or~~

8 (b) on a third-party recovery as provided in 53-2-612; or

9 (c) as provided in [sections 8 through 25].

10 (3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only:

11 ~~(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a~~
12 ~~recipient for services provided before he reached age 65; or~~

13 ~~(ii) as provided in [sections 5 through 7], [sections 8 through 25], or 53-2-612 or as provided in~~
14 ~~a written agreement between the department and the recipient or the recipient's representative pursuant~~
15 ~~to 42 U.S.C. 1382b(b).~~

16 ~~(b) The department may recover under 53-2-611 only:~~

17 ~~(i) after the death of the recipient's surviving spouse, if any; and~~

18 ~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and~~
19 ~~totally disabled.~~

20 ~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which~~
21 ~~each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974,~~
22 ~~shall be prorated to reimburse the county share of participation. The provisions of this section are hereby~~
23 ~~extended to provide for the recovery of all medical assistance paid under this part and likewise to all~~
24 ~~medical aid to the aged assistance paid by the department of social and rehabilitation services during the~~
25 ~~period of time July 1, 1965, through June 30, 1967.~~

26 (4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and
27 this section, the department may pursue recovery under any section or combination of sections as may be
28 applicable in a particular case. However, the department may not recover pursuant to [sections 5 through
29 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf
30 of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact

1 that the department has or may have a lien on particular property does not preclude the department from
 2 pursuing recovery under another section against other assets of the recipient or assets of another person
 3 as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."

4
 5 **Section 4.** Section 53-6-144, MCA, is amended to read:

6 "53-6-144. **Relative's responsibility.** ~~The~~ Except as otherwise provided in [sections 5 through 26]
 7 and the provisions of other parts of this title, as amended, notwithstanding, the only relatives that ~~can~~ may
 8 be held responsible for payment of medical assistance under the program are the husband or wife of the
 9 individual, the parents of children under ~~age~~ 18 years of age, and the parents of blind or disabled persons
 10 over ~~age~~ 18 years of age."

11
 12 **NEW SECTION.** **Section 5. Recovery of medicaid benefits after recipient's death.** (1) After the
 13 death of a recipient, the department shall execute and present a claim:

14 (a) against the recipient's estate, within the time specified in the published notice to creditors in
 15 the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the
 16 recipient; and

17 (b) against a person who has received property of the recipient by distribution or survival for an
 18 amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the
 19 property received by the person from the recipient by distribution or survival, whichever is less. The
 20 amount recoverable from a person with respect to property of the recipient must be reduced by the value
 21 of any property transferred to the person for less than full market value for which a period of ineligibility
 22 was imposed under [section 2] against the recipient during the recipient's life. The department may bring
 23 an action in district court to collect upon a claim under this subsection (1).

24 (2) A department claim under subsection (1) must include notice of the right to seek an undue
 25 hardship exception under rules adopted by the department in accordance with subsection (7).

26 (3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by
 27 law, a department claim against an estate is not barred for lack of timely presentation if it is presented in
 28 the probate proceeding within the time specified in the published notice to creditors.

29 (b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the
 30 later of the recipient's death or the closing of the recipient's estate.

1 (4) (a) For purposes of this section, property of a deceased recipient received by distribution or
2 survival is any real or personal property or other assets in which the recipient had any right, title, or interest
3 immediately prior to the time of death, including but not limited to assets passing to one or more survivors,
4 heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right
5 of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For
6 purposes of this section, property is not received by distribution or survival to the extent that the person
7 received the property or property interest for consideration equal to the fair market value of the property
8 or property interest received.

9 (b) Property received by distribution includes but is not limited to:

10 (i) property from a deceased recipient's estate distributed to a person through a probated estate
11 or a small estate administration procedure; and

12 (ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a
13 person through any other procedure or when a legal procedure for distribution has not been followed.

14 (c) Assets of a deceased recipient's estate and property of a deceased recipient received by
15 distribution or survival are not exempt from recovery under this section because the assets or property were
16 or may have been considered by the department as exempt income or resources for the purpose of
17 determining eligibility for medical assistance during the recipient's lifetime.

18 (5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect
19 to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department
20 may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and
21 to other affected persons.

22 (b) An estate or other person is not entitled to a reduction or waiver of the department's claim on
23 the grounds that there is or may be another person from whom recovery may be made under this section.

24 (6) The department may waive recovery under this section if it determines that recovery would not
25 be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection,
26 the department may consider but is not limited to consideration of the following factors:

27 (a) the estimated cost of recovery;

28 (b) the amount reasonably likely to be recovered;

29 (c) the likelihood that recovery by the department will cause a person to become eligible for public
30 assistance; and

1 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
2 issues that may recur with respect to the administration or implementation of this section.

3 (7) (a) Upon presentation or assertion of a claim by the department under this section, the personal
4 representative of the estate or another affected person may apply to the department, in accordance with
5 procedures established by department rule, for a waiver of recovery based on undue hardship. The
6 department shall waive its recovery under this section in whole or in part if it determines that recovery
7 would result in undue hardship as defined by department rule.

8 (b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
9 amended, and that implement federal regulations and policies, establishing procedures and criteria for undue
10 hardship exceptions. The rules adopted under this section must include but are not limited to rules
11 addressing the following:

12 (i) a description of the circumstances considered to constitute an undue hardship;

13 (ii) the procedures by which an individual may seek an undue hardship exception;

14 (iii) the persons entitled to an undue hardship exception; and

15 (iv) whether an exception is partial or temporary and the circumstances under which partial or
16 temporary exceptions may be granted.

17 (c) If a person is aggrieved by a department determination on an application for an undue hardship
18 exception, the person may assert a claim of entitlement to an undue hardship exception in any court
19 proceeding on a department petition for allowance of an estate claim or for recovery of an amount due
20 under this section. When a person claims entitlement to an undue hardship exception in the proceeding,
21 the court shall make a determination on the claim for an exception based upon the department rules
22 adopted in accordance with this section. Department denial of all or any part of the relief requested in an
23 exception application under this section may be reviewed by a district court only as provided in this
24 subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under
25 the Montana Administrative Procedure Act or the department's rules.

26 (8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the
27 department may collect upon its claim.

28 (b) The department may not recover under this section while there is a surviving spouse of the
29 recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or
30 permanently and totally disabled. This subsection (b) does not preclude the department from recovering

1 from the recipient's estate after the death of the surviving spouse or child.

2 (9) All money recovered under this section from any source must be distributed to the state general
3 fund and to the United States as required by applicable state and federal laws and regulations.

4

5 **NEW SECTION. Section 6. Payment of certain funds of deceased recipient to**
6 **department.** (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds
7 of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days
8 following the resident's death, pay those funds to the department.

9 (b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the
10 deceased resident's personal funds that are held by the nursing facility and that would have been payable
11 to the facility from the resident's funds. The facility shall pay the remaining funds to the department as
12 required by this section.

13 (c) Funds paid to the department under this section are not considered to be property of the
14 deceased resident's estate, and [section 5] does not apply to recovery of the funds by the department.

15 (2) For purposes of this section, a nursing facility is holding personal funds of a resident if the
16 facility:

17 (a) maintains possession of the funds in the facility; or

18 (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual
19 or shared account in a financial institution.

20 (3) The department shall apply any funds received under this section proportionately to the federal
21 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
22 by law to the funds.

23

24 **NEW SECTION. Section 7. Payment of excess burial funds or assets to department.** (1) After the
25 death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person,
26 including but not limited to the decedent's spouse, heir, devisee, or personal representative, who holds
27 funds or other property that was specifically designated and set aside for paying for the disposition of the
28 decedent's remains and for related expenses shall, after paying for the disposition and related expenses,
29 pay all remaining funds to the department within 30 days following the burial, cremation, or other final
30 disposition of the decedent's remains. The funds must be paid to the department regardless of any

1 provision in a written contract, trust, or other agreement entered into on or after [the effective date of this
2 section], directing a different disposition of the funds. Funds paid to the department under this section are
3 not considered to be property of the decedent's estate, and [section 5] does not apply to recovery of the
4 funds by the department.

5 (2) The department shall apply any funds received under this section proportionately to the federal
6 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
7 by law to the funds.

8

9 **NEW SECTION. Section 8. Department lien upon real property of certain medicaid recipients --**
10 **conditions.** (1) Following notice and opportunity for hearing as provided in [section 9], the department
11 shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable
12 medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf
13 of the recipient prior to, on, or after the imposition of the lien if:

14 (a) the recipient has been admitted to a nursing facility, an intermediate care facility for the
15 mentally retarded, or an institution for mental disease;

16 (b) the property upon which a lien is being imposed is the recipient's home and the home is not
17 lawfully resided in by:

18 (i) the recipient's spouse;

19 (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled;

20 or

21 (iii) the recipient's sibling who has an ownership interest and equity in the recipient's home and who
22 was residing in the recipient's home for a period of at least 1 year immediately prior to the recipient's
23 institutionalization; and

24 (c) the recipient has been determined by the department, pursuant to subsection (2), to be
25 permanently institutionalized.

26 (2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department
27 determines that the recipient cannot reasonably be expected to be discharged from the facility and to return
28 home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged
29 from the facility and return home if the recipient or a representative of the recipient declares that there is
30 no intent to return home or if the recipient has been institutionalized for 6 months or longer without a

1 discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge
2 plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but
3 failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation
4 of discharge from the facility and a return home has the burden of demonstrating the reasonable
5 expectation. The reasonable expectation must be established based upon medical evidence and medical
6 opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be
7 discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable
8 expectation of discharge from the facility and a return home.

9 (3) For purposes of this section, real property of a recipient includes any interest in real property
10 that may be subject to a judgment lien.

11
12 **NEW SECTION. Section 9. Notice of intent to impose lien -- opportunity for hearing.** Before
13 imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its
14 determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing
15 pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

16
17 **NEW SECTION. Section 10. Contents of lien document -- scope of obligation secured.** (1) The
18 lien must contain the name and address of the recipient who owns an interest in the property, a legal
19 description of the property, and an address and telephone number of the office or representative of the
20 department who can provide more information about the lien. The lien applies only to the property
21 described in the lien.

22 (2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be
23 executed by an authorized agent or employee of the department. The execution must be acknowledged
24 as provided in 70-21-203.

25 (3) The lien need not state the specific amount of medical assistance repayment owed. The lien
26 is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien
27 states that:

28 (a) the lien is imposed under this section to secure the described property for recovery of medical
29 assistance paid on behalf of the recipient prior to, on, and after the date of the lien; and

30 (b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of

1 any right, title, or interest of the recipient in the property or upon the recipient's death.

2

3 **NEW SECTION. Section 11. Filing of lien -- effect of filing -- priority -- renewal -- dissolution of lien.**

4 (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property
5 is located.

6 (2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent
7 purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier
8 unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The
9 lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded
10 encumbrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer,
11 or exchange of the property by the recipient is considered a relinquishment of any homestead exemption
12 under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

13 (3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when
14 the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is
15 considered the judgment creditor and the recipient is considered the judgment debtor.

16 (4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released,
17 or dissolved. The department may renew a lien for one or more additional 6-year period.

18 (5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no
19 longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following
20 the recipient's discharge and return home, the department shall upon written request file a release of lien
21 in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the
22 department from recovering under [section 5, 6, or 7].

23 (6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property
24 that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the
25 survivor, subject to the lien imposed pursuant to [section 8].

26

27 **NEW SECTION. Section 12. Recovery of medical assistance secured by lien -- application for**

28 **issuance of writ of execution.** (1) After the recipient's death or upon the sale, transfer, or exchange of
29 any right, title, or interest of the recipient in the property, the department may file with the clerk of the
30 district court in the county in which the real property is located an application for issuance of a writ of

1 execution for levy on the real property described in the lien. The levy may be for the amount of recoverable
2 medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including
3 amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do
4 not include attorney fees.

5 (2) The application for the writ must be sworn and must contain the following:

6 (a) the name of the recipient, a legal description of the real property, and a description of the
7 recipient's interest in the property;

8 (b) a statement that the department has imposed a lien upon the property under [section 8];

9 (c) a statement that the lien complies with the requirements of [sections 8 through 25];

10 (d) the date upon which the lien was filed and the office in which it was filed;

11 (e) a description of the sale, transfer, or exchange that entitles the department to recover or a
12 statement that the recipient or, if applicable, the recipient's spouse has died and the date of the death;

13 (f) a statement that the lien has not dissolved under [section 11(5)];

14 (g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance
15 costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that
16 additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

17 (h) a statement that the total amount due has not been paid as of the date of the application for
18 the writ;

19 (i) a statement that recovery is not prohibited by this section;

20 (j) the names and addresses of all persons who have a recorded interest in the property, including
21 a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder;
22 and

23 (k) a request that a writ of execution be issued for sale of the described property if an action is not
24 filed within the time provided for in [section 14].

25 (3) The filing of an application under this section for a writ of execution is not the filing of a legal
26 action, and the requirements applicable to legal actions do not apply to the application or application
27 proceedings.

28
29 **NEW SECTION. Section 13. Notice of application -- proof of notice -- request for issuance of writ**
30 **of execution.** (1) The department shall provide notice, as required by this section, of the filing of the

1 application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the
2 property or residing lawfully on the property.

3 (2) The notice must contain a description of the property and must state that the department has
4 a lien under [section 8] upon the described property, that the department has filed an application for a writ
5 of execution seeking sale of the property, and that a writ will be issued unless an action challenging
6 issuance of the writ has been filed in accordance with [section 14] within 60 days of the date of mailing
7 or service of notice or first publication of notice. The department shall include with the notice a copy of
8 the application for the writ. The notice must also include notice of the right to seek an undue hardship
9 exception as provided in [section 17].

10 (3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested,
11 to the name and address stated in the recorded instrument creating each person's interest in the property
12 or, in the case of a person residing on the property, to the address of the residence on the property.
13 Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned
14 to the department and indicates that the notice was received by or on behalf of the addressee.

15 (b) If the return receipt is not returned to the department indicating that the notice was received
16 by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the
17 addressee and to personally serve or mail notice to that person.

18 (c) If after the exercise of reasonable diligence the department is unable to locate the person
19 owning the interest in the property, the department shall publish the notice required by subsection (2) three
20 times, once each week for 3 successive weeks, in a newspaper published in the county in which the
21 property is located if a newspaper is published in the county. If a newspaper is not published in the county,
22 then publication must be in a newspaper having a general circulation in the county.

23 (d) With respect to a person residing lawfully on the property but having no recorded interest in
24 the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

25 (e) In the alternative, the notice and application may be personally served upon any person entitled
26 to notice under this section.

27 (4) (a) After giving notice as required by this section, the department shall file with the clerk of
28 court an affidavit describing:

29 (i) the manner in which notice has been provided to each person entitled to notice;

30 (ii) the date of mailing, personal service, or first publication of the notice; and

1 (iii) the date by which each person is required to file an action to challenge issuance of the writ of
2 execution.

3 (b) The department shall attach to the affidavit the return receipt, the affidavit of personal service,
4 the affidavit of publication, or other proof of service of the notice. If no action has been filed within the
5 time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.

6
7 **NEW SECTION. Section 14. Action to challenge issuance of writ of execution.** A person with a
8 recorded interest in the real property described in an application filed under [section 12], including the
9 recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer, mortgagee, or lienholder,
10 or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days of mailing or service of
11 notice or first publication of notice as provided in [section 13], file an action in the district court in the
12 county in which the real property is located challenging the requested issuance of a writ of execution. The
13 court shall determine the validity or invalidity of the department's lien and order appropriate relief, including
14 issuance of the writ or denial of the application for issuance of the writ.

15
16 **NEW SECTION. Section 15. Department right of recovery -- limitations.** (1) Except as provided
17 in [section 17] and this section, the department may collect upon its lien as provided in [sections 8 through
18 25].

19 (2) The department may not recover upon a lien imposed on the recipient's home under [section
20 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least
21 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This
22 subsection does not preclude the department from recovering under [section 5, 6, or 7].

23 (3) The department may not recover on a lien imposed under [section 8] while there is a surviving
24 spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age,
25 blind, or permanently and totally disabled. This subsection does not preclude the department from later
26 recovery in accordance with [section 18].

27
28 **NEW SECTION. Section 16. Payment of amount due -- periodic payments -- substitute security.**

29 (1) If the total amount due to the department to satisfy a lien imposed under [sections 8 through 25] is
30 paid, the department may not file an application under [section 12], shall withdraw its application if the

1 application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

2 (2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees
3 of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may
4 agree with the recipient's surviving spouse to accept substitute security and partial payment. The
5 department may agree to periodic payment of substitute security if the terms of agreement, including
6 security for repayment, are acceptable to the department and if the agreement does not reduce the amount
7 due or the likelihood of recovering the amount due. The department may delay filing an application for
8 issuance of a writ of execution for purposes of conducting negotiations for an agreement in lieu of
9 execution.

10

11 **NEW SECTION. Section 17. Waiver of recovery in cases of undue hardship -- rulemaking.** (1) (a)
12 A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any
13 other interested person may apply to the department, in accordance with procedures established by
14 department rule, for a waiver of recovery because of undue hardship. The department shall waive its
15 recovery under this section, in whole or in part, if it determines that recovery would result in undue
16 hardship as defined by department rule.

17 (b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and
18 implementing federal regulations and policies, establishing procedures and criteria for granting undue
19 hardship exceptions under this section. The rules must include but are not limited to rules addressing the
20 following:

21 (i) a description of the circumstances considered to constitute an undue hardship;

22 (ii) the procedures by which an individual may seek an undue hardship exception;

23 (iii) the persons entitled to an undue hardship exception; and

24 (iv) whether an exception is partial or temporary and the circumstances under which a partial or
25 temporary exception may be granted.

26 (c) A person aggrieved by a department determination on an application for an undue hardship
27 exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section
28 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part
29 of that action, the court shall make a determination on the undue hardship claim in accordance with the
30 department's rules adopted pursuant to this section. Department denial of all or any part of the relief

1 requested in an application for an undue hardship exception under this section may be reviewed by a
2 district court only through filing of an action as provided in this subsection (c). Denial does not grant a
3 right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure
4 Act or the department's rules.

5 (2) The department may waive recovery of recoverable medical assistance secured by a lien
6 imposed under [section 8] if the department determines that recovery would not be cost-effective. In
7 determining whether recovery would be cost-effective, the department may consider but is not limited to
8 consideration of the following factors:

9 (a) the estimated cost of recovery;

10 (b) the amount reasonably likely to be recovered;

11 (c) the likelihood that recovery by the department will cause a person to become eligible for public
12 assistance; and

13 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
14 issues that may recur with respect to the administration or implementation of [sections 8 through 25].

15

16 **NEW SECTION. Section 18. Delay in recovery -- sale subject to lien.** (1) If the department is
17 precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the
18 department shall maintain the lien in place and upon elimination of the condition that precluded recovery,
19 the department may recover under this section. The department may not file an application for issuance
20 of a writ of execution to recover under this subsection more than 3 years after elimination of the last
21 condition that precluded recovery.

22 (2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections
23 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien
24 remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also
25 subject to the lien.

26

27 **NEW SECTION. Section 19. Spouse's limited exemption from lien.** (1) Subject to Title 70,
28 chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse
29 resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange
30 of the home, entitled to an exemption from the department's lien in an amount determined in accordance

1 with this section. The exemption is in the form of:

2 (a) a partial release of the department's lien if the exemption amount is less than the full amount
3 of the department's lien; or

4 (b) a full release of the department's lien if the exemption amount is equal to or greater than the
5 full amount of the department's lien.

6 (2) The amount of the exemption is the lesser of an amount equal to:

7 (a) the fair market value of the interest in the home that the surviving spouse received from the
8 recipient by distribution or survival; or

9 (b) \$100,000 minus the total fair market value of all of the surviving spouse's assets, other than
10 the interest in the home, that the surviving spouse received from the recipient by distribution or survival.
11 For purposes of this section, the surviving spouse's assets do not include personal property that is exempt
12 from execution under Title 25, chapter 13, part 6.

13 (3) The department may by rule require a surviving spouse to file an application for the exemption
14 and to provide information, documentation, and verification regarding the applicant's assets and the fair
15 market value of assets. The department shall provide the applicant notice of its determination on the
16 application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

17 (4) Upon determination by the department that the applicant is entitled to an exemption, the
18 department shall provide to the applicant an appropriate full or partial release in the amount of the
19 exemption.

20

21 **NEW SECTION. Section 20. Issuance of writ of execution by clerk of court.** (1) If the
22 requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the
23 property to be levied upon, the amount due as of the date of filing of the application, and a statement that
24 additional amounts may be due up to and through the date of the sale.

25 (2) The clerk shall issue the writ if:

26 (a) an action has not been filed under [section 14] within 60 days of mailing, service, or first
27 publication of notice, as provided in [section 13]; or

28 (b) the department has filed an affidavit meeting the requirements of [section 13(4)]; and

29 (c) (i) the department has filed a sworn application containing the statements required by [section
30 12]; or

1 (ii) the court has ordered the issuance of the writ in an action under [section 14].

2
3 **NEW SECTION. Section 21. Effect of sale -- title acquired.** The purchaser of property pursuant
4 to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that
5 the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising
6 from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property
7 taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13,
8 part 8, or other law.

9
10 **NEW SECTION. Section 22. Disposition of sale proceeds -- application of recovered medical**
11 **assistance.** (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under
12 [section 20] must be distributed in the following order:

13 (a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section
14 11(2)];

15 (b) as payment of any claims under [section 23(3) and (4)];

16 (c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred
17 in collection;

18 (d) to the department for recoverable medical assistance.

19 (2) The department shall apply any funds received under subsection (1)(d) proportionately to the
20 federal and state shares of recoverable medical assistance.

21 (3) Any excess funds remaining after application of proceeds to recoverable medical assistance
22 must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.

23
24 **NEW SECTION. Section 23. Action by department or other person to preserve property subject**
25 **to lien -- recovery of costs.** (1) The department may, in its discretion, take any action it considers
26 necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections
27 8 through 25], including but not limited to the following:

28 (a) the payment of any unpaid taxes on the property;

29 (b) the purchase or renewal of insurance coverage on the property and the payment of necessary
30 insurance premiums;

1 (c) the ordering of and payment for necessary repairs and maintenance on the property; and

2 (d) if the property is unoccupied, the rental or lease of the property and the application of any
3 receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining
4 amount toward repayment of recoverable medical assistance.

5 (2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the
6 value of the property are secured by the lien imposed under [section 8] and may be recovered in addition
7 to all other amounts secured by the lien.

8 (3) A person who, after the institutionalization or death of the recipient and after the
9 institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's
10 insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or
11 recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim
12 against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for
13 recovery of any amounts paid for those purposes. The claim must be supported by written documentation
14 that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and
15 items purchased with each payment. A claim for reimbursement made under this subsection is prior to the
16 department's lien imposed under [section 8].

17 (4) The amount of a claim made under subsection (3) must be reduced by:

18 (a) the amount of any rents and profits from the property paid after the institutionalization or death
19 of the recipient and the institutionalization of the recipient's surviving spouse, if any;

20 (b) the value of any property that the person with a claim under subsection (3) will receive by
21 distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

22 (c) the value of any property that the person with a claim under subsection (3) will receive by
23 distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

24

25 **NEW SECTION. Section 24. Time for filing of application.** Except as provided in [section 18], the
26 department may not file an application for issuance of a writ of execution to recover upon a lien imposed
27 under [sections 8 through 25] more than 3 years after the latest of:

28 (1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

29 (2) the death of the recipient; or

30 (3) the death of the recipient's surviving spouse.

1 NEW SECTION. **Section 25. Coordination of lien with other medical assistance recoveries.** The
2 existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8
3 through 25] is invalid for any reason or is unenforceable under [section 17] does not preclude the
4 department from recovering under [section 5, 6, or 7].

5
6 NEW SECTION. **Section 26. Rulemaking authority.** The department may adopt rules to implement
7 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal
8 law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

9
10 NEW SECTION. **Section 27. Repealer.** Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are
11 repealed.

12
13 NEW SECTION. **Section 28. Codification instruction.** [Sections 1, 2, and 5 through 26] are
14 intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53,
15 chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

16
17 NEW SECTION. **Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21
22 NEW SECTION. **Section 30. Retroactive applicability.** [Section 2] applies retroactively, within the
23 meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of
24 determining eligibility for medical assistance on or after July 1, 1995.

25
26 NEW SECTION. **Section 31. Applicability.** (1) [Sections 3 through 7] apply to medical assistance
27 recipients who die on or after [the effective date of those sections].

28 (2) [Sections 2 and 8 through 25] apply as a condition of medical assistance eligibility or
29 continuation of medical assistance eligibility after [the effective date of those sections].

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0236, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing restrictions on eligibility and requiring recovery of Medicaid expenditures for long-term care through liens against estates and property.

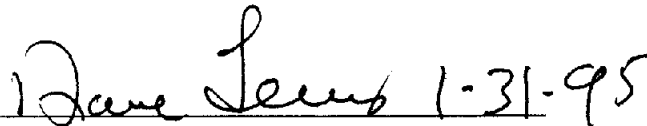
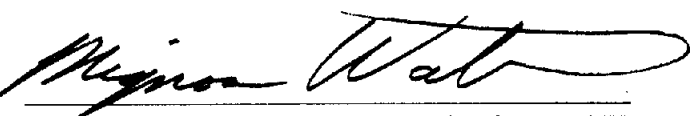
ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. This legislation implements a new proposal currently contained in the Governor's Executive Budget. All of the expenditures and revenues shown below are in addition to the Executive Budget present law base.
3. Liens will result in recoveries during the 1997 biennium.
4. The funding for recovered assets is at the federal matching rate of 30.26% general fund and 69.74% federal funds during FY96 and 31.00% general fund and 69.00% federal funds during FY97. Contracted services are matched at a reduced rate of 50.00% general fund and 50.00% federal funds during both years of the biennium.
5. Under current law, long-term care recipients can shelter or transfer substantial amounts of assets in order to become eligible for Medicaid long-term care benefits. This legislation is aimed at getting potential recipients to plan to finance their own long-term care needs, or to reimburse the state for expenditures on their behalf from the recipients estates upon their death.
6. Liens and recoveries totalling \$600,000 per year will result from this legislation, based on conclusions from an independent study of Montana's long-term care program, according to the Department of Social and Rehabilitation Services (SRS). (This includes \$181,560 general fund and \$418,440 federal funds in FY96 and \$186,000 general fund and \$414,000 federal funds in FY97.)
7. The department will contract for the design, implementation and operation of a recipient asset management system which will track the assets of Medicaid long-term care recipients. This will include a media campaign during FY96 only, estimated to cost \$100,000. (The cost is \$50,000 general fund and \$50,000 federal funds.)
8. The contractor will be reimbursed on a contingency basis of 15% of the assets and actual recoveries made. The department estimates this will be \$90,000 each year of the biennium. (This is 15% of the projected \$600,000 in recoveries. The funding is \$45,000 general fund and \$45,000 federal funds each year.)

FISCAL IMPACT:

<u>Same as New Proposal in Executive Budget</u>	<u>FY96 Difference</u>	<u>FY97 Difference</u>
<u>Expenditures:</u>		
Contracted Services Costs	190,000	90,000
<u>Funding:</u>		
General Fund	95,000	45,000
Federal Fund	<u>95,000</u>	<u>45,000</u>
Total	190,000	90,000

(continued)

 DAVE LEWIS, BUDGET DIRECTOR DATE MIGNON WATERMAN, PRIMARY SPONSOR DATE

Office of Budget and Program Planning

Fiscal Note for SB0236, as introduced

SB 236

Fiscal Note Request, SB0236, as introduced

Page 2

(continued)

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Revenues:</u>		
General Fund Increase	181,560	186,000
Federal Fund Increase	<u>418,440</u>	<u>414,000</u>
Total	600,000	600,000
<u>Net Impact:</u>		
General Fund Increase	86,560	141,000
Federal Fund Increase	323,440	369,000

1 SENATE BILL NO. 236

2 INTRODUCED BY WATERMAN, COBB

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION
6 OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR
7 REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR
8 LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP
9 EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION
10 SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601,
11 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."
12

13 WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years
14 and threatens to continue escalating beyond the capacity of Montanans to fund the program;

15 WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible
16 for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers,
17 trusts, and other arrangements;

18 WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid
19 benefits were often transferred or disposed of prior to the death of the individual, making the assets
20 unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving
21 spouse, dependent children, or other dependent family members;

22 WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for
23 burial have often become unavailable for recovery by the Medicaid Program; and

24 WHEREAS, the United States Congress has recently enacted amendments to the federal Social
25 Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater
26 number of persons and to recover the value of Medicaid benefits already paid in order to ensure that
27 Medicaid benefits remain available to the truly needy.

28 STATEMENT OF INTENT

29 A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the
30 department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

1 The legislature intends that the department of social and rehabilitation services adopt rules that are
2 reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue
3 hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and
4 policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should
5 include but are not limited to rules addressing the following:

- 6 (1) a description of the circumstances considered to constitute an undue hardship;
- 7 (2) the procedures by which an individual may seek an undue hardship exception;
- 8 (3) the persons entitled to an undue hardship exception; and
- 9 (4) whether the exception is partial or temporary and the circumstances under which partial or
10 temporary exceptions may be granted.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Definitions.** As used in this part, unless expressly provided otherwise,
15 the following definitions apply:

16 (1) "Department" means the department of social and rehabilitation services provided for in
17 2-15-2201.

18 (2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible
19 for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who
20 has received benefits, whether or not that person has been determined to be eligible.

21 (3) "Recoverable medical assistance" means a payment pursuant to this part, including but not
22 limited to a payment made for items or services provided to and insurance premiums, deductibles, and
23 coinsurance paid on behalf of a recipient who:

24 (a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility
25 for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the
26 department determined under [section 8] that the person was not reasonably expected to be discharged
27 and return home; or

28 (b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended,
29 when the item or service was provided or when the insurance premium, deductible, or coinsurance was
30 paid.

1 (4) "Recovery" means legal action brought for the payment or repayment of recoverable medical
2 assistance or amounts of money paid for other purposes.

3

4 **NEW SECTION. Section 2. Period of ineligibility for medical assistance when assets disposed of**
5 **for less than fair market value -- undue hardship exception -- department to adopt rules.** (1) The
6 department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal
7 regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance
8 under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any
9 assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42
10 U.S.C. 1396p, as may be amended, or by other federal law.

11 (2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient
12 under this section to the extent that the department determines, in accordance with procedures specified
13 by department rule, that the denial of eligibility would cause an undue hardship as defined by department
14 rule.

15 (3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
16 amended, and that implement federal regulations and policies to implement this section. The rules adopted
17 under this section must include but are not limited to rules addressing the following:

18 (a) a description of the circumstances considered to constitute an undue hardship;

19 (b) the procedures by which an individual may seek an undue hardship exception;

20 (c) the persons entitled to an undue hardship exception; and

21 (d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of
22 an undue hardship exception.

23 (4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended
24 to prohibit the department from adopting rules consistent with federal law that provide for a period of
25 ineligibility for public assistance programs other than medical assistance when an applicant or recipient
26 directly or indirectly disposes of assets for less than fair market value.

27

28 **Section 3.** Section 53-6-143, MCA, is amended to read:

29 **"53-6-143. Limitations on Medical assistance liens and recoveries.** (1) **Except as provided in**
30 **this section, the department may not impose a lien upon the property of an** applicant for or recipient of

1 ~~medical assistance may not be required to execute an agreement creating a lien on his real property.~~

2 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
3 against the real or personal property of ~~an individual~~ a medicaid applicant or recipient prior to ~~his~~ the
4 applicant's or recipient's death for recovery of medical assistance paid or to be paid on his behalf under
5 this chapter only:

6 (a) pursuant to a judgment of a court for recovery of medical assistance ~~incorrectly~~ paid on behalf
7 of the recipient; ~~or~~

8 (b) on a third-party recovery as provided in 53-2-612; ~~or~~

9 (c) as provided in [sections 8 through 25].

10 (3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only:

11 ~~(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a~~
12 ~~recipient for services provided before he reached age 65; or~~

13 ~~(ii) as provided in [sections 5 through 7], [sections 8 through 25], or 53-2-612 or as provided in~~
14 ~~a written agreement between the department and the recipient or the recipient's representative pursuant~~
15 ~~to 42 U.S.C. 1382b(b).~~

16 ~~(b) The department may recover under 53-2-611 only:~~

17 ~~(i) after the death of the recipient's surviving spouse, if any; and~~

18 ~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and~~
19 ~~totally disabled.~~

20 ~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which~~
21 ~~each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974,~~
22 ~~shall be prorated to reimburse the county share of participation. The provisions of this section are hereby~~
23 ~~extended to provide for the recovery of all medical assistance paid under this part and likewise to all~~
24 ~~medical aid to the aged assistance paid by the department of social and rehabilitation services during the~~
25 ~~period of time July 1, 1965, through June 30, 1967.~~

26 (4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and
27 this section, the department may pursue recovery under any section or combination of sections as may be
28 applicable in a particular case. However, the department may not recover pursuant to [sections 5 through
29 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf
30 of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact

1 that the department has or may have a lien on particular property does not preclude the department from
 2 pursuing recovery under another section against other assets of the recipient or assets of another person
 3 as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."

4
 5 **Section 4.** Section 53-6-144, MCA, is amended to read:

6 **"53-6-144. Relative's responsibility.** ~~The~~ Except as otherwise provided in [sections 5 through 26]
 7 and the provisions of other parts of this title, ~~as amended, notwithstanding,~~ the only relatives that ~~can~~ may
 8 be held responsible for payment of medical assistance under the program are the husband or wife of the
 9 individual, the parents of children under age 18 years of age, and the parents of blind or disabled persons
 10 over age 18 years of age."

11
 12 **NEW SECTION. Section 5. Recovery of medicaid benefits after recipient's death.** (1) After the
 13 death of a recipient, the department shall execute and present a claim:

14 (a) against the recipient's estate, within the time specified in the published notice to creditors in
 15 the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the
 16 recipient; and

17 (b) against a person who has received property of the recipient by distribution or survival for an
 18 amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the
 19 property received by the person from the recipient by distribution or survival, whichever is less. The
 20 amount recoverable from a person with respect to property of the recipient must be reduced by the value
 21 of any property transferred to the person for less than full market value for which a period of ineligibility
 22 was imposed under [section 2] against the recipient during the recipient's life. The department may bring
 23 an action in district court to collect upon a claim under this subsection (1)(~~B~~).

24 (2) A department claim under subsection (1) must include notice of the right to seek an undue
 25 hardship exception under rules adopted by the department in accordance with subsection (7).

26 (3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by
 27 law, a department claim against an estate is not barred for lack of timely presentation if it is presented in
 28 the probate proceeding within the time specified in the published notice to creditors.

29 (b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the
 30 later of the recipient's death or the closing of the recipient's estate.

1 (4) (a) For purposes of this section, property of a deceased recipient received by distribution or
2 survival is any real or personal property or other assets in which the recipient had any right, title, or interest
3 immediately prior to the time of death, including but not limited to assets passing to one or more survivors,
4 heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right
5 of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For
6 purposes of this section, property is not received by distribution or survival to the extent that the person
7 received the property or property interest for consideration equal to the fair market value of the property
8 or property interest received.

9 (b) Property received by distribution includes but is not limited to:

10 (i) property from a deceased recipient's estate distributed to a person through a probated estate
11 or a small estate administration procedure; and

12 (ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a
13 person through any other procedure or when a legal procedure for distribution has not been followed.

14 (c) Assets of a deceased recipient's estate and property of a deceased recipient received by
15 distribution or survival are not exempt from recovery under this section because the assets or property were
16 or may have been considered by the department as exempt income or resources for the purpose of
17 determining eligibility for medical assistance during the recipient's lifetime.

18 (5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect
19 to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department
20 may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and
21 to other affected persons.

22 (b) An estate or other person is not entitled to a reduction or waiver of the department's claim on
23 the grounds that there is or may be another person from whom recovery may be made under this section.

24 (6) The department may waive recovery under this section if it determines that recovery would not
25 be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection,
26 the department may consider but is not limited to consideration of the following factors:

27 (a) the estimated cost of recovery;

28 (b) the amount reasonably likely to be recovered;

29 (c) the likelihood that recovery by the department will cause a person to become eligible for public
30 assistance; and

1 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
2 issues that may recur with respect to the administration or implementation of this section.

3 (7) (a) Upon presentation or assertion of a claim by the department under this section, the personal
4 representative of the estate or another affected person may apply to the department, in accordance with
5 procedures established by department rule, for a waiver of recovery based on undue hardship. The
6 department shall waive its recovery under this section in whole or in part if it determines that recovery
7 would result in undue hardship as defined by department rule.

8 (b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
9 amended, and that implement federal regulations and policies, establishing procedures and criteria for undue
10 hardship exceptions. The rules adopted under this section must include but are not limited to rules
11 addressing the following:

12 (i) a description of the circumstances considered to constitute an undue hardship;

13 (ii) the procedures by which an individual may seek an undue hardship exception;

14 (iii) the persons entitled to an undue hardship exception; and

15 (iv) whether an exception is partial or temporary and the circumstances under which partial or
16 temporary exceptions may be granted.

17 (c) If a person is aggrieved by a department determination on an application for an undue hardship
18 exception, the person may assert a claim of entitlement to an undue hardship exception in any court
19 proceeding on a department petition for allowance of an estate claim or for recovery of an amount due
20 under this section. When a person claims entitlement to an undue hardship exception in the proceeding,
21 the court shall make a determination on the claim for an exception based upon the department rules
22 adopted in accordance with this section. Department denial of all or any part of the relief requested in an
23 exception application under this section may be reviewed by a district court only as provided in this
24 subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under
25 the Montana Administrative Procedure Act or the department's rules.

26 (8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the
27 department may collect upon its claim.

28 (b) The department may not recover under this section while there is a surviving spouse of the
29 recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or
30 permanently and totally disabled. This subsection (b) does not preclude the department from recovering

1 from the recipient's estate after the death of the surviving spouse or child.

2 (9) All money recovered under this section from any source must be distributed to the state general
3 fund and to the United States as required by applicable state and federal laws and regulations.

4
5 NEW SECTION. **Section 6. Payment of certain funds of deceased recipient to**
6 **department.** (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds
7 of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days
8 following the resident's death, pay those funds to the department.

9 (b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the
10 deceased resident's personal funds that are held by the nursing facility and that would have been payable
11 to the facility from the resident's funds. The facility shall pay the remaining funds to the department as
12 required by this section.

13 (c) Funds paid to the department under this section are not considered to be property of the
14 deceased resident's estate, and [section 5] does not apply to recovery of the funds by the department.

15 (2) For purposes of this section, a nursing facility is holding personal funds of a resident if the
16 facility:

17 (a) maintains possession of the funds in the facility; or

18 (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual
19 or shared account in a financial institution.

20 (3) The department shall apply any funds received under this section proportionately to the federal
21 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
22 by law to the funds.

23
24 NEW SECTION. **Section 7. Payment of excess burial funds or assets to department.** (1) After the
25 death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person,
26 including but not limited to the decedent's spouse, heir, devisee, or personal representative, who holds
27 funds or other property that was specifically designated and set aside for paying for the disposition of the
28 decedent's remains and for related expenses shall, after paying for the disposition and related expenses,
29 pay all remaining funds to the department within 30 days following the burial, cremation, or other final
30 disposition of the decedent's remains. The funds must be paid to the department regardless of any

1 provision in a written contract, trust, or other agreement entered into on or after [the effective date of this
2 section], directing a different disposition of the funds. Funds paid to the department under this section are
3 not considered to be property of the decedent's estate, and [section 5] does not apply to recovery of the
4 funds by the department.

5 (2) The department shall apply any funds received under this section proportionately to the federal
6 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
7 by law to the funds.

8
9 **NEW SECTION. Section 8. Department lien upon real property of certain medicaid recipients --**

10 **conditions.** (1) Following notice and opportunity for hearing as provided in [section 9], the department
11 shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable
12 medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf
13 of the recipient prior to, on, or after the imposition of the lien if:

14 (a) the recipient has been admitted to a nursing facility, an intermediate care facility for the
15 mentally retarded, or an institution for mental disease;

16 (b) the property upon which a lien is being imposed is the recipient's home and the home is not
17 lawfully resided in by:

18 (i) the recipient's spouse;

19 (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled;

20 or

21 (iii) the recipient's sibling who has an ownership interest and equity in the recipient's home and who
22 was residing in the recipient's home for a period of at least 1 year immediately prior to the recipient's
23 institutionalization; and

24 (c) the recipient has been determined by the department, pursuant to subsection (2), to be
25 permanently institutionalized.

26 (2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department
27 determines that the recipient cannot reasonably be expected to be discharged from the facility and to return
28 home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged
29 from the facility and return home if the recipient or a representative of the recipient declares that there is
30 no intent to return home or if the recipient has been institutionalized for 6 months or longer without a

1 discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge
2 plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but
3 failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation
4 of discharge from the facility and a return home has the burden of demonstrating the reasonable
5 expectation. The reasonable expectation must be established based upon medical evidence and medical
6 opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be
7 discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable
8 expectation of discharge from the facility and a return home.

9 (3) For purposes of this section, real property of a recipient includes any interest in real property
10 that may be subject to a judgment lien.

11
12 **NEW SECTION. Section 9. Notice of intent to impose lien -- opportunity for hearing.** Before
13 imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its
14 determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing
15 pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

16
17 **NEW SECTION. Section 10. Contents of lien document -- scope of obligation secured.** (1) The
18 lien must contain the name and address of the recipient who owns an interest in the property, a legal
19 description of the property, and an address and telephone number of the office or representative of the
20 department who can provide more information about the lien. The lien applies only to the property
21 described in the lien.

22 (2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be
23 executed by an authorized agent or employee of the department. The execution must be acknowledged
24 as provided in 70-21-203.

25 (3) The lien need not state the specific amount of medical assistance repayment owed. The lien
26 is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien
27 states that:

28 (a) the lien is imposed under ~~this section~~ **[SECTIONS 8 THROUGH 25]** to secure the described
29 property for recovery of medical assistance paid on behalf of the recipient prior to, on, and after the date
30 of the lien; and

1 (b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of
2 any right, title, or interest of the recipient in the property or upon the recipient's death.

3

4 **NEW SECTION. Section 11. Filing of lien -- effect of filing -- priority -- renewal -- dissolution of lien.**

5 (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property
6 is located.

7 (2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent
8 purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier
9 unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The
10 lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded
11 encumbrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer,
12 or exchange of the property by the recipient is considered a relinquishment of any homestead exemption
13 under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

14 (3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when
15 the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is
16 considered the judgment creditor and the recipient OR THE RECIPIENT'S SPOUSE OR SUCCESSOR IN
17 INTEREST is considered the judgment debtor.

18 (4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released,
19 or dissolved. The department may renew a lien for one or more additional 6-year ~~period~~ PERIODS.

20 (5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no
21 longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following
22 the recipient's discharge and return home, the department shall upon written request file a release of lien
23 in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the
24 department from recovering under [section 5, 6, or 7].

25 (6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property
26 that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the
27 survivor, subject to the lien imposed pursuant to [section 8].

28

29 **NEW SECTION. Section 12. Recovery of medical assistance secured by lien -- application for**

30 **issuance of writ of execution.** (1) After the recipient's death or upon the sale, transfer, or exchange of

1 any right, title, or interest of the recipient in the property, the department may file with the clerk of the
2 district court in the county in which the real property is located an application for issuance of a writ of
3 execution for levy on the real property described in the lien. The levy may be for the amount of recoverable
4 medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including
5 amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do
6 not include attorney fees.

7 (2) The application for the writ must be sworn and must contain the following:

8 (a) the name of the recipient, a legal description of the real property, and a description of the
9 recipient's interest in the property;

10 (b) a statement that the department has imposed a lien upon the property under [section 8];

11 (c) a statement that the lien complies with the requirements of [sections 8 through 25];

12 (d) the date upon which the lien was filed and the office in which it was filed;

13 (e) a description of the sale, transfer, ~~or exchange~~, OR OTHER EVENT that entitles the department
14 to recover ~~or a statement that the recipient or, if applicable, the recipient's spouse has died and the date~~
15 ~~of the death~~;

16 (f) a statement that the lien has not dissolved under [section 11(5)];

17 (g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance
18 costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that
19 additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

20 (h) a statement that the total amount due has not been paid as of the date of the application for
21 the writ;

22 (i) a statement that recovery is not prohibited by this section;

23 (j) the names and addresses of all persons who have a recorded interest in the property, including
24 a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder;
25 and

26 (k) a request that a writ of execution be issued for sale of the described property if an action is not
27 filed within the time provided for in [section 14].

28 (3) The filing of an application under this section for a writ of execution is not the filing of a legal
29 action, and the requirements applicable to legal actions do not apply to the application or application
30 proceedings.

1 **NEW SECTION. Section 13. Notice of application -- proof of notice -- request for issuance of writ**
2 **of execution.** (1) The department shall provide notice, as required by this section, of the filing of the
3 application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the
4 property or residing lawfully on the property.

5 (2) The notice must contain a description of the property and must state that the department has
6 a lien under [section 8] upon the described property, that the department has filed an application for a writ
7 of execution seeking sale of the property, and that a writ will be issued unless an action challenging
8 issuance of the writ has been filed in accordance with [section 14] within 60 days of the date of mailing
9 or service of notice or first publication of notice. The department shall include with the notice a copy of
10 the application for the writ. The notice must also include notice of the right to seek an undue hardship
11 exception as provided in [section 17].

12 (3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested,
13 to the name and address stated in the recorded instrument creating each person's interest in the property
14 or, in the case of a person residing on the property, to the address of the residence on the property.
15 Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned
16 to the department and indicates that the notice was received by or on behalf of the addressee.

17 (b) If the return receipt is not returned to the department indicating that the notice was received
18 by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the
19 addressee and to personally serve or mail notice to that person.

20 (c) If after the exercise of reasonable diligence the department is unable to locate the person
21 owning the interest in the property, the department shall publish the notice required by subsection (2) three
22 times, once each week for 3 successive weeks, in a newspaper published in the county in which the
23 property is located if a newspaper is published in the county. If a newspaper is not published in the county,
24 then publication must be in a newspaper having a general circulation in the county.

25 (d) With respect to a person residing lawfully on the property but having no recorded interest in
26 the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

27 (e) In the alternative, the notice and application may be personally served upon any person entitled
28 to notice under this section.

29 (4) (a) After giving notice as required by this section, the department shall file with the clerk of
30 court an affidavit describing:

- 1 (i) the manner in which notice has been provided to each person entitled to notice;
 2 (ii) the date of mailing, personal service, or first publication of the notice; and
 3 (iii) the date by which each person is required to file an action to challenge issuance of the writ of
 4 execution.

5 (b) The department shall attach to the affidavit the return receipt, the affidavit of personal service,
 6 the affidavit of publication, or other proof of service of the notice. If no action has been filed within the
 7 time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.
 8

9 **NEW SECTION. Section 14. Action to challenge issuance of writ of execution.** A person with a
 10 recorded interest in OR RESIDING LAWFULLY UPON the real property described in an application filed under
 11 [section 12], including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer,
 12 mortgagee, or lienholder, or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days
 13 of mailing or service of notice or first publication of notice as provided in [section 13], file an action in the
 14 district court in the county in which the real property is located challenging the requested issuance of a writ
 15 of execution. The court shall determine the validity or invalidity of the department's lien and order
 16 appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.
 17

18 **NEW SECTION. Section 15. Department right of recovery -- limitations.** (1) Except as provided
 19 in [~~section~~ **SECTIONS 17 AND 19**] and this section, the department may collect upon its lien as provided
 20 in [sections 8 through 25].

21 (2) The department may not recover upon a lien imposed on the recipient's home under [section
 22 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least
 23 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This
 24 subsection does not preclude the department from recovering under [section 5, 6, or 7].

25 (3) The department may not recover on a lien imposed under [section 8] while there is a surviving
 26 spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age,
 27 blind, or permanently and totally disabled. This subsection does not preclude the department from later
 28 recovery in accordance with [section 18].
 29

30 **NEW SECTION. Section 16. Payment of amount due -- periodic payments -- substitute security.**

1 (1) If the total amount due to the department to satisfy a lien imposed under [sections 8 through 25] is
 2 paid, the department may not file an application under [section 12], shall withdraw its application if the
 3 application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

4 (2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees
 5 of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may
 6 agree with the recipient's surviving spouse to accept substitute security and partial payment. The
 7 department may agree to periodic ~~payment of~~ PAYMENTS OR substitute security if the terms of agreement,
 8 including security for repayment, are acceptable to the department and if the agreement does not reduce
 9 the amount due or the likelihood of recovering the amount due. The department may delay filing an
 10 application for issuance of a writ of execution for purposes of conducting negotiations for an agreement
 11 in lieu of execution.

12

13 **NEW SECTION. Section 17. Waiver of recovery in cases of undue hardship -- rulemaking.** (1) (a)
 14 A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any
 15 other interested person may apply to the department, in accordance with procedures established by
 16 department rule, for a waiver of recovery because of undue hardship. The department shall waive its
 17 recovery under this section, in whole or in part, if it determines that recovery would result in undue
 18 hardship as defined by department rule.

19 (b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and
 20 implementing federal regulations and policies, establishing procedures and criteria for granting undue
 21 hardship exceptions under this section. The rules must include but are not limited to rules addressing the
 22 following:

23 (i) a description of the circumstances considered to constitute an undue hardship;

24 (ii) the procedures by which an individual may seek an undue hardship exception;

25 (iii) the persons entitled to an undue hardship exception; and

26 (iv) whether an exception is partial or temporary and the circumstances under which a partial or
 27 temporary exception may be granted.

28 (c) A person aggrieved by a department determination on an application for an undue hardship
 29 exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section
 30 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part

1 of that action, the court shall make a determination on the undue hardship claim in accordance with the
 2 department's rules adopted pursuant to this section. Department denial of all or any part of the relief
 3 requested in an application for an undue hardship exception under this section may be reviewed by a
 4 district court only through filing of an action as provided in this subsection (c). Denial does not grant a
 5 right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure
 6 Act or the department's rules.

7 (2) The department may waive recovery of recoverable medical assistance secured by a lien
 8 imposed under [section 8] if the department determines that recovery would not be cost-effective. In
 9 determining whether recovery would be cost-effective, the department may consider but is not limited to
 10 consideration of the following factors:

11 (a) the estimated cost of recovery;

12 (b) the amount reasonably likely to be recovered;

13 (c) the likelihood that recovery by the department will cause a person to become eligible for public
 14 assistance; and

15 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
 16 issues that may recur with respect to the administration or implementation of [sections 8 through 25].
 17

18 **NEW SECTION. Section 18. Delay in recovery -- sale subject to lien.** (1) If the department is
 19 precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the
 20 department shall maintain the lien in place and upon elimination of the condition that precluded recovery,
 21 the department may recover under this section. The department may not file an application for issuance
 22 of a writ of execution to recover under this subsection more than 3 years after elimination of the last
 23 condition that precluded recovery.

24 (2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections
 25 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien
 26 remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also
 27 subject to the lien.
 28

29 **NEW SECTION. Section 19. Spouse's limited exemption from lien.** (1) Subject to Title 70,
 30 chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse

1 resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange
 2 of the home, entitled to an exemption from the department's lien in an amount determined in accordance
 3 with this section. The exemption is in the form of:

4 (a) a partial release of the department's lien if the exemption amount is less than the full amount
 5 of the department's lien; or

6 (b) a full release of the department's lien if the exemption amount is equal to or greater than the
 7 full amount of the department's lien.

8 (2) The amount of the exemption is the lesser of an amount equal to:

9 (a) the fair market value of the interest in the home that the surviving spouse received from the
 10 recipient by distribution or survival; or

11 (b) \$100,000 minus the total fair market value of all of the surviving spouse's assets, other than
 12 the interest in the home, that the surviving spouse received from the recipient by distribution or survival.

13 For purposes of this section, the surviving spouse's assets do not include personal property that is exempt
 14 from execution under Title 25, chapter 13, part 6.

15 (3) The department may by rule require a surviving spouse to file an application for the exemption
 16 and to provide information, documentation, and verification regarding the applicant's assets and the fair
 17 market value of assets. The department shall provide the applicant notice of its determination on the
 18 application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

19 (4) Upon determination by the department that the applicant is entitled to an exemption, the
 20 department shall provide to the applicant an appropriate full or partial release in the amount of the
 21 exemption.

22
 23 **NEW SECTION. Section 20. Issuance of writ of execution by clerk of court.** (1) If the
 24 requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the
 25 property to be levied upon, the amount due as of the date of filing of the application, and a statement that
 26 additional amounts may be due up to and through the date of the sale.

27 (2) The clerk shall issue the writ if:

28 (a) ~~(i)~~ an action has not been filed under [section 14] within 60 days of mailing, service, or first
 29 publication of notice, as provided in [section 13]; ~~or~~

30 ~~(b)~~ ~~(ii)~~ the department has filed an affidavit meeting the requirements of [section 13(4)]; and

1 ~~(e)-(f)(III)~~ the department has filed a sworn application containing the statements required by
2 [section 12]; or

3 ~~(f)(B)~~ the court has ordered the issuance of the writ in an action under [section 14].
4

5 NEW SECTION. **Section 21. Effect of sale -- title acquired.** The purchaser of property pursuant
6 to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that
7 the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising
8 from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property
9 taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13,
10 part 8, or other law.
11

12 NEW SECTION. **Section 22. Disposition of sale proceeds -- application of recovered medical**
13 **assistance.** (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under
14 [section 20] must be distributed in the following order:

15 (a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section
16 11(2)];

17 (b) as payment of any claims under [section 23(3) and (4)];

18 (c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred
19 in collection;

20 (d) to the department for recoverable medical assistance.

21 (2) The department shall apply any funds received under subsection (1)(d) proportionately to the
22 federal and state shares of recoverable medical assistance.

23 (3) Any excess funds remaining after application of proceeds to recoverable medical assistance
24 must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.
25

26 NEW SECTION. **Section 23. Action by department or other person to preserve property subject**
27 **to lien -- recovery of costs.** (1) The department may, in its discretion, take any action it considers
28 necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections
29 8 through 25], including but not limited to the following:

30 (a) the payment of any unpaid taxes on the property;

1 (b) the purchase or renewal of insurance coverage on the property and the payment of necessary
2 insurance premiums;

3 (c) the ordering of and payment for necessary repairs and maintenance on the property; and

4 (d) if the property is unoccupied, the rental or lease of the property and the application of any
5 receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining
6 amount toward repayment of recoverable medical assistance.

7 (2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the
8 value of the property are secured by the lien imposed under [section 8] and may be recovered in addition
9 to all other amounts secured by the lien.

10 (3) A person who, after the institutionalization or death of the recipient and after the
11 institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's
12 insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or
13 recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim
14 against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for
15 recovery of any amounts paid for those purposes. The claim must be supported by written documentation
16 that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and
17 items purchased with each payment. A claim for reimbursement made under this subsection is prior to the
18 department's lien imposed under [section 8].

19 (4) The amount of a claim made under subsection (3) must be reduced by:

20 (a) the amount of any rents and profits from the property paid after the institutionalization or death
21 of the recipient and the institutionalization of the recipient's surviving spouse, if any;

22 (b) the value of any property that the person with a claim under subsection (3) will receive by
23 distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

24 (c) the value of any property that the person with a claim under subsection (3) will receive by
25 distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

26

27 **NEW SECTION. Section 24. Time for filing of application.** Except as provided in [section 18], the
28 department may not file an application for issuance of a writ of execution to recover upon a lien imposed
29 under [sections 8 through 25] more than 3 years after the latest of:

30 (1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

- 1 (2) the death of the recipient; or
2 (3) the death of the recipient's surviving spouse.

3
4 **NEW SECTION. Section 25. Coordination of lien with other medical assistance recoveries.** The
5 existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8
6 through 25] is invalid for any reason or is unenforceable under [section 17] does not preclude the
7 department from recovering under [section 5, 6, or 7].

8
9 **NEW SECTION. Section 26. Rulemaking authority.** The department may adopt rules to implement
10 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal
11 law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

12
13 **NEW SECTION. Section 27. Repealer.** Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are
14 repealed.

15
16 **NEW SECTION. Section 28. Codification instruction.** [Sections 1, 2, and 5 through 26] are
17 intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53,
18 chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

19
20 **NEW SECTION. Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from the invalid
23 applications.

24
25 **NEW SECTION. Section 30. Retroactive applicability.** [Section 2] applies retroactively, within the
26 meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of
27 determining eligibility for medical assistance on or after July 1, 1995.

28
29 **NEW SECTION. Section 31. Applicability.** (1) [Sections 3 through 7] apply to medical assistance
30 recipients who die on or after [the effective date of those sections].

1 (2) [Sections 2 and 8 through 25] apply as a condition of medical assistance eligibility or
2 continuation of medical assistance eligibility after [the effective date of those sections].

3

4 NEW SECTION. Section 32. Effective dates. (1) [Sections 1, ~~2, 27~~ 28 through 31, and this
5 section] are effective on passage and approval.

6 (2) [Sections ~~3 through 26~~ 2 THROUGH 27] are effective July 1, 1995.

7

-END-

1 SENATE BILL NO. 236

2 INTRODUCED BY WATERMAN, COBB

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION
6 OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR
7 REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR
8 LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP
9 EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION
10 SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601,
11 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."
12

13 WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years
14 and threatens to continue escalating beyond the capacity of Montanans to fund the program;

15 WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible
16 for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers,
17 trusts, and other arrangements;

18 WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid
19 benefits were often transferred or disposed of prior to the death of the individual, making the assets
20 unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving
21 spouse, dependent children, or other dependent family members;

22 WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for
23 burial have often become unavailable for recovery by the Medicaid Program; and

24 WHEREAS, the United States Congress has recently enacted amendments to the federal Social
25 Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater
26 number of persons and to recover the value of Medicaid benefits already paid in order to ensure that
27 Medicaid benefits remain available to the truly needy.

28 STATEMENT OF INTENT

29 A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the
30 department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

1 The legislature intends that the department of social and rehabilitation services adopt rules that are
2 reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue
3 hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and
4 policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should
5 include but are not limited to rules addressing the following:

6 (1) a description of the circumstances considered to constitute an undue hardship;

7 (2) the procedures by which an individual may seek an undue hardship exception;

8 (3) the persons entitled to an undue hardship exception; and

9 (4) whether the exception is partial or temporary and the circumstances under which partial or
10 temporary exceptions may be granted.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Definitions. As used in this part, unless expressly provided otherwise,
15 the following definitions apply:

16 (1) "Department" means the department of social and rehabilitation services provided for in
17 2-15-2201.

18 (2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible
19 for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who
20 has received benefits, whether or not that person has been determined to be eligible.

21 (3) "Recoverable medical assistance" means a payment pursuant to this part, including but not
22 limited to a payment made for items or services provided to and insurance premiums, deductibles, and
23 coinsurance paid on behalf of a recipient who:

24 (a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility
25 for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the
26 department determined under [section 8] that the person was not reasonably expected to be discharged
27 and return home; or

28 (b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended,
29 when the item or service was provided or when the insurance premium, deductible, or coinsurance was
30 paid.

1 (4) "Recovery" means legal action brought for the payment or repayment of recoverable medical
2 assistance or amounts of money paid for other purposes.

3
4 **NEW SECTION. Section 2. Period of ineligibility for medical assistance when assets disposed of**
5 **for less than fair market value -- undue hardship exception -- department to adopt rules.** (1) The
6 department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal
7 regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance
8 under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any
9 assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42
10 U.S.C. 1396p, as may be amended, or by other federal law.

11 (2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient
12 under this section to the extent that the department determines, in accordance with procedures specified
13 by department rule, that the denial of eligibility would cause an undue hardship as defined by department
14 rule.

15 (3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
16 amended, and that implement federal regulations and policies to implement this section. The rules adopted
17 under this section must include but are not limited to rules addressing the following:

- 18 (a) a description of the circumstances considered to constitute an undue hardship;
19 (b) the procedures by which an individual may seek an undue hardship exception;
20 (c) the persons entitled to an undue hardship exception; and
21 (d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of
22 an undue hardship exception.

23 (4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended
24 to prohibit the department from adopting rules consistent with federal law that provide for a period of
25 ineligibility for public assistance programs other than medical assistance when an applicant or recipient
26 directly or indirectly disposes of assets for less than fair market value.

27
28 **Section 3.** Section 53-6-143, MCA, is amended to read:

29 **"53-6-143. Limitations on Medical assistance liens and recoveries.** (1) ~~An~~ Except as provided in
30 this section, the department may not impose a lien upon the property of an applicant for or recipient of

1 ~~medical assistance may not be required to execute an agreement creating a lien on his real property.~~

2 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
3 against the real or personal property of ~~an individual~~ a medicaid applicant or recipient prior to his the
4 applicant's or recipient's death for recovery of medical assistance paid or to be paid on his behalf under
5 ~~this chapter~~ only:

6 (a) pursuant to a judgment of a court for recovery of medical assistance ~~incorrectly~~ paid on behalf
7 of the recipient; ~~or~~

8 (b) on a third-party recovery as provided in 53-2-612; or

9 (c) as provided in [sections 8 through 25].

10 (3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only:

11 ~~(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a~~
12 ~~recipient for services provided before he reached age 65; or~~

13 ~~(ii) as provided in [sections 5 through 7], [sections 8 through 25], or 53-2-612 or as provided in~~
14 ~~a written agreement between the department and the recipient or the recipient's representative pursuant~~
15 ~~to 42 U.S.C. 1382b(b).~~

16 ~~(b) The department may recover under 53-2-611 only:~~

17 ~~(i) after the death of the recipient's surviving spouse, if any; and~~

18 ~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and~~
19 ~~totally disabled.~~

20 ~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which~~
21 ~~each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974,~~
22 ~~shall be prorated to reimburse the county share of participation. The provisions of this section are hereby~~
23 ~~extended to provide for the recovery of all medical assistance paid under this part and likewise to all~~
24 ~~medical aid to the aged assistance paid by the department of social and rehabilitation services during the~~
25 ~~period of time July 1, 1965, through June 30, 1967.~~

26 (4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and
27 this section, the department may pursue recovery under any section or combination of sections as may be
28 applicable in a particular case. However, the department may not recover pursuant to [sections 5 through
29 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf
30 of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact

1 that the department has or may have a lien on particular property does not preclude the department from
 2 pursuing recovery under another section against other assets of the recipient or assets of another person
 3 as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."
 4

5 **Section 4.** Section 53-6-144, MCA, is amended to read:

6 **"53-6-144. Relative's responsibility.** ~~The~~ Except as otherwise provided in [sections 5 through 26]
 7 and the provisions of other parts of this title, ~~as amended, notwithstanding,~~ the only relatives that ~~can~~ may
 8 be held responsible for payment of medical assistance under the program are the husband or wife of the
 9 individual, the parents of children under ~~age~~ 18 years of age, and the parents of blind or disabled persons
 10 over ~~age~~ 18 years of age."
 11

12 **NEW SECTION. Section 5. Recovery of medicaid benefits after recipient's death.** (1) After the
 13 death of a recipient, the department shall execute and present a claim:

14 (a) against the recipient's estate, within the time specified in the published notice to creditors in
 15 the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the
 16 recipient; and

17 (b) against a person who has received property of the recipient by distribution or survival for an
 18 amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the
 19 property received by the person from the recipient by distribution or survival, whichever is less. The
 20 amount recoverable from a person with respect to property of the recipient must be reduced by the value
 21 of any property transferred to the person for less than full market value for which a period of ineligibility
 22 was imposed under [section 2] against the recipient during the recipient's life. The department may bring
 23 an action in district court to collect upon a claim under this subsection (1)(B).

24 (2) A department claim under subsection (1) must include notice of the right to seek an undue
 25 hardship exception under rules adopted by the department in accordance with subsection (7).

26 (3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by
 27 law, a department claim against an estate is not barred for lack of timely presentation if it is presented in
 28 the probate proceeding within the time specified in the published notice to creditors.

29 (b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the
 30 later of the recipient's death or the closing of the recipient's estate.

1 (4) (a) For purposes of this section, property of a deceased recipient received by distribution or
2 survival is any real or personal property or other assets in which the recipient had any right, title, or interest
3 immediately prior to the time of death, including but not limited to assets passing to one or more survivors,
4 heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right
5 of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For
6 purposes of this section, property is not received by distribution or survival to the extent that the person
7 received the property or property interest for consideration equal to the fair market value of the property
8 or property interest received.

9 (b) Property received by distribution includes but is not limited to:

10 (i) property from a deceased recipient's estate distributed to a person through a probated estate
11 or a small estate administration procedure; and

12 (ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a
13 person through any other procedure or when a legal procedure for distribution has not been followed.

14 (c) Assets of a deceased recipient's estate and property of a deceased recipient received by
15 distribution or survival are not exempt from recovery under this section because the assets or property were
16 or may have been considered by the department as exempt income or resources for the purpose of
17 determining eligibility for medical assistance during the recipient's lifetime.

18 (5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect
19 to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department
20 may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and
21 to other affected persons.

22 (b) An estate or other person is not entitled to a reduction or waiver of the department's claim on
23 the grounds that there is or may be another person from whom recovery may be made under this section.

24 (6) The department may waive recovery under this section if it determines that recovery would not
25 be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection,
26 the department may consider but is not limited to consideration of the following factors:

27 (a) the estimated cost of recovery;

28 (b) the amount reasonably likely to be recovered;

29 (c) the likelihood that recovery by the department will cause a person to become eligible for public
30 assistance; and

1 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
2 issues that may recur with respect to the administration or implementation of this section.

3 (7) (a) Upon presentation or assertion of a claim by the department under this section, the personal
4 representative of the estate or another affected person may apply to the department, in accordance with
5 procedures established by department rule, for a waiver of recovery based on undue hardship. The
6 department shall waive its recovery under this section in whole or in part if it determines that recovery
7 would result in undue hardship as defined by department rule.

8 (b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
9 amended, and that implement federal regulations and policies, establishing procedures and criteria for undue
10 hardship exceptions. The rules adopted under this section must include but are not limited to rules
11 addressing the following:

12 (i) a description of the circumstances considered to constitute an undue hardship;

13 (ii) the procedures by which an individual may seek an undue hardship exception;

14 (iii) the persons entitled to an undue hardship exception; and

15 (iv) whether an exception is partial or temporary and the circumstances under which partial or
16 temporary exceptions may be granted.

17 (c) If a person is aggrieved by a department determination on an application for an undue hardship
18 exception, the person may assert a claim of entitlement to an undue hardship exception in any court
19 proceeding on a department petition for allowance of an estate claim or for recovery of an amount due
20 under this section. When a person claims entitlement to an undue hardship exception in the proceeding,
21 the court shall make a determination on the claim for an exception based upon the department rules
22 adopted in accordance with this section. Department denial of all or any part of the relief requested in an
23 exception application under this section may be reviewed by a district court only as provided in this
24 subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under
25 the Montana Administrative Procedure Act or the department's rules.

26 (8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the
27 department may collect upon its claim.

28 (b) The department may not recover under this section while there is a surviving spouse of the
29 recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or
30 permanently and totally disabled. This subsection (b) does not preclude the department from recovering

1 from the recipient's estate after the death of the surviving spouse or child.

2 (9) All money recovered under this section from any source must be distributed to the state general
3 fund and to the United States as required by applicable state and federal laws and regulations.

4

5 **NEW SECTION. Section 6. Payment of certain funds of deceased recipient to**
6 **department.** (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds
7 of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days
8 following the resident's death, pay those funds to the department.

9 (b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the
10 deceased resident's personal funds that are held by the nursing facility and that would have been payable
11 to the facility from the resident's funds. The facility shall pay the remaining funds to the department as
12 required by this section.

13 (c) Funds paid to the department under this section are not considered to be property of the
14 deceased resident's estate, and [section 5] does not apply to recovery of the funds by the department.

15 (2) For purposes of this section, a nursing facility is holding personal funds of a resident if the
16 facility:

17 (a) maintains possession of the funds in the facility; or

18 (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual
19 or shared account in a financial institution.

20 (3) The department shall apply any funds received under this section proportionately to the federal
21 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
22 by law to the funds.

23

24 **NEW SECTION. Section 7. Payment of excess burial funds or assets to department.** (1) After the
25 death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person,
26 including but not limited to the decedent's spouse, heir, devisee, or personal representative, who holds
27 funds or other property that was specifically designated and set aside for paying for the disposition of the
28 decedent's remains and for related expenses shall, after paying for the disposition and related expenses,
29 pay all remaining funds to the department within 30 days following the burial, cremation, or other final
30 disposition of the decedent's remains. The funds must be paid to the department regardless of any

1 provision in a written contract, trust, or other agreement entered into on or after [the effective date of this
 2 section], directing a different disposition of the funds. Funds paid to the department under this section are
 3 not considered to be property of the decedent's estate, and [section 5] does not apply to recovery of the
 4 funds by the department.

5 (2) The department shall apply any funds received under this section proportionately to the federal
 6 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
 7 by law to the funds.

8

9 **NEW SECTION. Section 8. Department lien upon real property of certain medicaid recipients --**
 10 **conditions.** (1) Following notice and opportunity for hearing as provided in [section 9], the department
 11 shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable
 12 medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf
 13 of the recipient prior to, on, or after the imposition of the lien if:

14 (a) the recipient has been admitted to a nursing facility, an intermediate care facility for the
 15 mentally retarded, or an institution for mental disease;

16 (b) the property upon which a lien is being imposed is the recipient's home and the home is not
 17 lawfully resided in by:

18 (i) the recipient's spouse;

19 (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled;

20 or

21 (iii) the recipient's sibling ~~who has an ownership interest and equity in the recipient's home and~~
 22 was residing in the recipient's home for a period of at least ~~4-year~~ 18 MONTHS immediately prior to the
 23 recipient's institutionalization; and

24 (c) the recipient has been determined by the department, pursuant to subsection (2), to be
 25 permanently institutionalized.

26 (2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department
 27 determines that the recipient cannot reasonably be expected to be discharged from the facility and to return
 28 home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged
 29 from the facility and return home if the recipient or a representative of the recipient declares that there is
 30 no intent to return home or if the recipient has been institutionalized for 6 months or longer without a

1 discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge
 2 plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but
 3 failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation
 4 of discharge from the facility and a return home has the burden of demonstrating the reasonable
 5 expectation. The reasonable expectation must be established based upon medical evidence and medical
 6 opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be
 7 discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable
 8 expectation of discharge from the facility and a return home.

9 (3) For purposes of this section, real property of a recipient includes any interest in real property
 10 that may be subject to a judgment lien.

11
 12 **NEW SECTION. Section 9. Notice of intent to impose lien -- opportunity for hearing.** Before
 13 imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its
 14 determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing
 15 pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

16
 17 **NEW SECTION. Section 10. Contents of lien document -- scope of obligation secured.** (1) The
 18 lien must contain the name and address of the recipient who owns an interest in the property, a legal
 19 description of the property, and an address and telephone number of the office or representative of the
 20 department who can provide more information about the lien. The lien applies only to the property
 21 described in the lien.

22 (2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be
 23 executed by an authorized agent or employee of the department. The execution must be acknowledged
 24 as provided in 70-21-203.

25 (3) The lien need not state the specific amount of medical assistance repayment owed. The lien
 26 is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien
 27 states that:

28 (a) the lien is imposed under ~~this section~~ **[SECTIONS 8 THROUGH 25]** to secure the described
 29 property for recovery of medical assistance paid on behalf of the recipient prior to, on, and after the date
 30 of the lien; and

1 (b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of
 2 any right, title, or interest of the recipient in the property or upon the recipient's death.

3
 4 **NEW SECTION. Section 11. Filing of lien -- effect of filing -- priority -- renewal -- dissolution of lien.**

5 (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property
 6 is located.

7 (2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent
 8 purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier
 9 unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The
 10 lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded
 11 encumbrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer,
 12 or exchange of the property by the recipient is considered a relinquishment of any homestead exemption
 13 under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

14 (3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when
 15 the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is
 16 considered the judgment creditor and the recipient OR THE RECIPIENT'S SPOUSE OR SUCCESSOR IN
 17 INTEREST is considered the judgment debtor.

18 (4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released,
 19 or dissolved. The department may renew a lien for one or more additional 6-year ~~period~~ PERIODS.

20 (5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no
 21 longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following
 22 the recipient's discharge and return home, the department shall upon written request file a release of lien
 23 in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the
 24 department from recovering under [section 5, 6, or 7].

25 (6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property
 26 that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the
 27 survivor, subject to the lien imposed pursuant to [section 8].

28
 29 **NEW SECTION. Section 12. Recovery of medical assistance secured by lien -- application for**
 30 **issuance of writ of execution.** (1) After the recipient's death or upon the sale, transfer, or exchange of

1 any right, title, or interest of the recipient in the property, the department may file with the clerk of the
2 district court in the county in which the real property is located an application for issuance of a writ of
3 execution for levy on the real property described in the lien. The levy may be for the amount of recoverable
4 medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including
5 amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do
6 not include attorney fees.

7 (2) The application for the writ must be sworn and must contain the following:

8 (a) the name of the recipient, a legal description of the real property, and a description of the
9 recipient's interest in the property;

10 (b) a statement that the department has imposed a lien upon the property under [section 8];

11 (c) a statement that the lien complies with the requirements of [sections 8 through 25];

12 (d) the date upon which the lien was filed and the office in which it was filed;

13 (e) a description of the sale, transfer, ~~or exchange,~~ OR OTHER EVENT that entitles the department
14 to recover ~~or a statement that the recipient or, if applicable, the recipient's spouse has died and the date~~
15 ~~of the death;~~

16 (f) a statement that the lien has not dissolved under [section 11(5)];

17 (g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance
18 costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that
19 additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

20 (h) a statement that the total amount due has not been paid as of the date of the application for
21 the writ;

22 (i) a statement that recovery is not prohibited by this section;

23 (j) the names and addresses of all persons who have a recorded interest in the property, including
24 a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder;
25 and

26 (k) a request that a writ of execution be issued for sale of the described property if an action is not
27 filed within the time provided for in [section 14].

28 (3) The filing of an application under this section for a writ of execution is not the filing of a legal
29 action, and the requirements applicable to legal actions do not apply to the application or application
30 proceedings.

1 **NEW SECTION. Section 13. Notice of application -- proof of notice -- request for issuance of writ**

2 **of execution.** (1) The department shall provide notice, as required by this section, of the filing of the
3 application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the
4 property or residing lawfully on the property.

5 (2) The notice must contain a description of the property and must state that the department has
6 a lien under [section 8] upon the described property, that the department has filed an application for a writ
7 of execution seeking sale of the property, and that a writ will be issued unless an action challenging
8 issuance of the writ has been filed in accordance with [section 14] within 60 days of the date of mailing
9 or service of notice or first publication of notice. The department shall include with the notice a copy of
10 the application for the writ. The notice must also include notice of the right to seek an undue hardship
11 exception as provided in [section 17].

12 (3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested,
13 to the name and address stated in the recorded instrument creating each person's interest in the property
14 or, in the case of a person residing on the property, to the address of the residence on the property.
15 Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned
16 to the department and indicates that the notice was received by or on behalf of the addressee.

17 (b) If the return receipt is not returned to the department indicating that the notice was received
18 by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the
19 addressee and to personally serve or mail notice to that person.

20 (c) If after the exercise of reasonable diligence the department is unable to locate the person
21 owning the interest in the property, the department shall publish the notice required by subsection (2) three
22 times, once each week for 3 successive weeks, in a newspaper published in the county in which the
23 property is located if a newspaper is published in the county. If a newspaper is not published in the county,
24 then publication must be in a newspaper having a general circulation in the county.

25 (d) With respect to a person residing lawfully on the property but having no recorded interest in
26 the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

27 (e) In the alternative, the notice and application may be personally served upon any person entitled
28 to notice under this section.

29 (4) (a) After giving notice as required by this section, the department shall file with the clerk of
30 court an affidavit describing:

1 (i) the manner in which notice has been provided to each person entitled to notice;
 2 (ii) the date of mailing, personal service, or first publication of the notice; and
 3 (iii) the date by which each person is required to file an action to challenge issuance of the writ of
 4 execution.

5 (b) The department shall attach to the affidavit the return receipt, the affidavit of personal service,
 6 the affidavit of publication, or other proof of service of the notice. If no action has been filed within the
 7 time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.
 8

9 **NEW SECTION. Section 14. Action to challenge issuance of writ of execution.** A person with a
 10 recorded interest in OR RESIDING LAWFULLY UPON the real property described in an application filed under
 11 [section 12], including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer,
 12 mortgagee, or lienholder, or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days
 13 of mailing or service of notice or first publication of notice as provided in [section 13], file an action in the
 14 district court in the county in which the real property is located challenging the requested issuance of a writ
 15 of execution. The court shall determine the validity or invalidity of the department's lien and order
 16 appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.
 17

18 **NEW SECTION. Section 15. Department right of recovery -- limitations.** (1) Except as provided
 19 in ~~[section~~ SECTIONS 17 AND 19] and this section, the department may collect upon its lien as provided
 20 in [sections 8 through 25].

21 (2) The department may not recover upon a lien imposed on the recipient's home under [section
 22 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least
 23 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This
 24 subsection does not preclude the department from recovering under [section 5, 6, or 7].

25 (3) The department may not recover on a lien imposed under [section 8] while there is a surviving
 26 spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age,
 27 blind, or permanently and totally disabled. This subsection does not preclude the department from later
 28 recovery in accordance with [section 18].
 29

30 **NEW SECTION. Section 16. Payment of amount due -- periodic payments -- substitute security.**

1 (1) If the total amount due to the department to satisfy a lien imposed under [sections 8 through 25] is
2 paid, the department may not file an application under [section 12], shall withdraw its application if the
3 application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

4 (2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees
5 of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may
6 agree with the recipient's surviving spouse to accept substitute security and partial payment. The
7 department may agree to periodic ~~payment of~~ PAYMENTS OR substitute security if the terms of agreement,
8 including security for repayment, are acceptable to the department and if the agreement does not reduce
9 the amount due or the likelihood of recovering the amount due. The department may delay filing an
10 application for issuance of a writ of execution for purposes of conducting negotiations for an agreement
11 in lieu of execution.

12
13 **NEW SECTION. Section 17. Waiver of recovery in cases of undue hardship -- rulemaking.** (1) (a)
14 A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any
15 other interested person may apply to the department, in accordance with procedures established by
16 department rule, for a waiver of recovery because of undue hardship. The department shall waive its
17 recovery under this section, in whole or in part, if it determines that recovery would result in undue
18 hardship as defined by department rule.

19 (b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and
20 implementing federal regulations and policies, establishing procedures and criteria for granting undue
21 hardship exceptions under this section. The rules must include but are not limited to rules addressing the
22 following:

23 (i) a description of the circumstances considered to constitute an undue hardship;
24 (ii) the procedures by which an individual may seek an undue hardship exception;
25 (iii) the persons entitled to an undue hardship exception; and
26 (iv) whether an exception is partial or temporary and the circumstances under which a partial or
27 temporary exception may be granted.

28 (c) A person aggrieved by a department determination on an application for an undue hardship
29 exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section
30 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part

1 of that action, the court shall make a determination on the undue hardship claim in accordance with the
 2 department's rules adopted pursuant to this section. Department denial of all or any part of the relief
 3 requested in an application for an undue hardship exception under this section may be reviewed by a
 4 district court only through filing of an action as provided in this subsection (c). Denial does not grant a
 5 right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure
 6 Act or the department's rules.

7 (2) The department may waive recovery of recoverable medical assistance secured by a lien
 8 imposed under [section 8] if the department determines that recovery would not be cost-effective. In
 9 determining whether recovery would be cost-effective, the department may consider but is not limited to
 10 consideration of the following factors:

11 (a) the estimated cost of recovery;

12 (b) the amount reasonably likely to be recovered;

13 (c) the likelihood that recovery by the department will cause a person to become eligible for public
 14 assistance; and

15 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
 16 issues that may recur with respect to the administration or implementation of [sections 8 through 25].
 17

18 **NEW SECTION. Section 18. Delay in recovery -- sale subject to lien.** (1) If the department is
 19 precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the
 20 department shall maintain the lien in place and upon elimination of the condition that precluded recovery,
 21 the department may recover under this section. The department may not file an application for issuance
 22 of a writ of execution to recover under this subsection more than 3 years after elimination of the last
 23 condition that precluded recovery.

24 (2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections
 25 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien
 26 remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also
 27 subject to the lien.
 28

29 **NEW SECTION. Section 19. Spouse's limited exemption from lien.** (1) Subject to Title 70,
 30 chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse

1 resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange
 2 of the home, entitled to an exemption from the department's lien in an amount determined in accordance
 3 with this section. The exemption is in the form of:

4 (a) a partial release of the department's lien if the exemption amount is less than the full amount
 5 of the department's lien; or

6 (b) a full release of the department's lien if the exemption amount is equal to or greater than the
 7 full amount of the department's lien.

8 (2) The amount of the exemption is the lesser of an amount equal to:

9 (a) the fair market value of the interest in the home that the surviving spouse received from the
 10 recipient by distribution or survival; or

11 (b) \$100,000 minus the total fair market value of all of the surviving spouse's assets, other than
 12 the interest in the home, that the surviving spouse received from the recipient by distribution or survival.
 13 For purposes of this section, the surviving spouse's assets do not include personal property that is exempt
 14 from execution under Title 25, chapter 13, part 6.

15 (3) The department may by rule require a surviving spouse to file an application for the exemption
 16 and to provide information, documentation, and verification regarding the applicant's assets and the fair
 17 market value of assets. The department shall provide the applicant notice of its determination on the
 18 application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

19 (4) Upon determination by the department that the applicant is entitled to an exemption, the
 20 department shall provide to the applicant an appropriate full or partial release in the amount of the
 21 exemption.

22
 23 **NEW SECTION.** **Section 20. Issuance of writ of execution by clerk of court.** (1) If the
 24 requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the
 25 property to be levied upon, the amount due as of the date of filing of the application, and a statement that
 26 additional amounts may be due up to and through the date of the sale.

27 (2) The clerk shall issue the writ if:

28 (a) ~~(I)~~ an action has not been filed under [section 14] within 60 days of mailing, service, or first
 29 publication of notice, as provided in [section 13]; ~~or~~

30 ~~(b)~~~~(II)~~ the department has filed an affidavit meeting the requirements of [section 13(4)]; and

1 ~~(e)-(III)~~ the department has filed a sworn application containing the statements required by
2 [section 12]; or

3 ~~(B)~~ the court has ordered the issuance of the writ in an action under [section 14].
4

5 **NEW SECTION. Section 21. Effect of sale -- title acquired.** The purchaser of property pursuant
6 to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that
7 the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising
8 from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property
9 taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13,
10 part 8, or other law.
11

12 **NEW SECTION. Section 22. Disposition of sale proceeds -- application of recovered medical**
13 **assistance.** (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under
14 [section 20] must be distributed in the following order:

15 (a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section
16 11(2)];

17 (b) as payment of any claims under [section 23(3) and (4)];

18 (c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred
19 in collection;

20 (d) to the department for recoverable medical assistance.

21 (2) The department shall apply any funds received under subsection (1)(d) proportionately to the
22 federal and state shares of recoverable medical assistance.

23 (3) Any excess funds remaining after application of proceeds to recoverable medical assistance
24 must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.
25

26 **NEW SECTION. Section 23. Action by department or other person to preserve property subject**
27 **to lien -- recovery of costs.** (1) The department may, in its discretion, take any action it considers
28 necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections
29 8 through 25], including but not limited to the following:

30 (a) the payment of any unpaid taxes on the property;

1 (b) the purchase or renewal of insurance coverage on the property and the payment of necessary
2 insurance premiums;

3 (c) the ordering of and payment for necessary repairs and maintenance on the property; and

4 (d) if the property is unoccupied, the rental or lease of the property and the application of any
5 receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining
6 amount toward repayment of recoverable medical assistance.

7 (2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the
8 value of the property are secured by the lien imposed under [section 8] and may be recovered in addition
9 to all other amounts secured by the lien.

10 (3) A person who, after the institutionalization or death of the recipient and after the
11 institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's
12 insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or
13 recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim
14 against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for
15 recovery of any amounts paid for those purposes. The claim must be supported by written documentation
16 that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and
17 items purchased with each payment. A claim for reimbursement made under this subsection is prior to the
18 department's lien imposed under [section 8].

19 (4) The amount of a claim made under subsection (3) must be reduced by:

20 (a) the amount of any rents and profits from the property paid after the institutionalization or death
21 of the recipient and the institutionalization of the recipient's surviving spouse, if any;

22 (b) the value of any property that the person with a claim under subsection (3) will receive by
23 distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

24 (c) the value of any property that the person with a claim under subsection (3) will receive by
25 distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

26
27 **NEW SECTION. Section 24. Time for filing of application.** Except as provided in [section 18], the
28 department may not file an application for issuance of a writ of execution to recover upon a lien imposed
29 under [sections 8 through 25] more than 3 years after the latest of:

30 (1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

- 1 (2) the death of the recipient; or
2 (3) the death of the recipient's surviving spouse.

3
4 **NEW SECTION. Section 25. Coordination of lien with other medical assistance recoveries.** The
5 existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8
6 through 25] is invalid for any reason or is unenforceable under [section 17] does not preclude the
7 department from recovering under [section 5, 6, or 7].

8
9 **NEW SECTION. Section 26. Rulemaking authority.** The department may adopt rules to implement
10 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal
11 law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

12
13 **NEW SECTION. Section 27. Repealer.** Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are
14 repealed.

15
16 **NEW SECTION. Section 28. Codification instruction.** [Sections 1, 2, and 5 through 26] are
17 intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53,
18 chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

19
20 **NEW SECTION. Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from the invalid
23 applications.

24
25 **NEW SECTION. Section 30. Retroactive applicability.** [Section 2] applies retroactively, within the
26 meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of
27 determining eligibility for medical assistance on or after July 1, 1995.

28
29 **NEW SECTION. Section 31. Applicability.** (1) [Sections 3 through 7] apply to medical assistance
30 recipients who die on or after [the effective date of those sections].



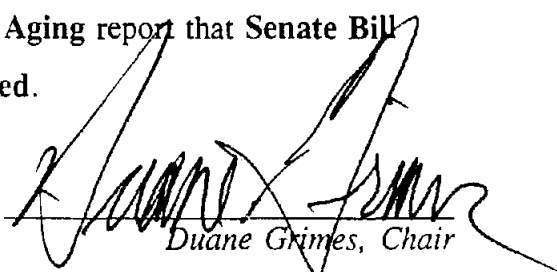
HOUSE STANDING COMMITTEE REPORT

March 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Human Services and Aging** report that Senate Bill 236 (third reading copy -- blue) be concurred in as amended.

Signed:


Duane Grimes, Chair

And, that such amendments read:

Carried by: Rep. Cobb

1. Page 8, line 27.
Following: "property"
Insert: "in excess of \$5,000 in value"

-END-

Committee Vote:
Yes 11, No 5.

SB 236
HOUSE
611132SC.Hdh

1 SENATE BILL NO. 236

2 INTRODUCED BY WATERMAN, COBB

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION
6 OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR
7 REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR
8 LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP
9 EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION
10 SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601,
11 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."
12

13 WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years
14 and threatens to continue escalating beyond the capacity of Montanans to fund the program;

15 WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible
16 for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers,
17 trusts, and other arrangements;

18 WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid
19 benefits were often transferred or disposed of prior to the death of the individual, making the assets
20 unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving
21 spouse, dependent children, or other dependent family members;

22 WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for
23 burial have often become unavailable for recovery by the Medicaid Program; and

24 WHEREAS, the United States Congress has recently enacted amendments to the federal Social
25 Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater
26 number of persons and to recover the value of Medicaid benefits already paid in order to ensure that
27 Medicaid benefits remain available to the truly needy.
28

29 STATEMENT OF INTENT

30 A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the

1 department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

2 The legislature intends that the department of social and rehabilitation services adopt rules that are
3 reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue
4 hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and
5 policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should
6 include but are not limited to rules addressing the following:

7 (1) a description of the circumstances considered to constitute an undue hardship;

8 (2) the procedures by which an individual may seek an undue hardship exception;

9 (3) the persons entitled to an undue hardship exception; and

10 (4) whether the exception is partial or temporary and the circumstances under which partial or
11 temporary exceptions may be granted.

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

14
15 NEW SECTION. Section 1. Definitions. As used in this part, unless expressly provided otherwise,
16 the following definitions apply:

17 (1) "Department" means the department of social and rehabilitation services provided for in
18 2-15-2201.

19 (2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible
20 for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who
21 has received benefits, whether or not that person has been determined to be eligible.

22 (3) "Recoverable medical assistance" means a payment pursuant to this part, including but not
23 limited to a payment made for items or services provided to and insurance premiums, deductibles, and
24 coinsurance paid on behalf of a recipient who:

25 (a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility
26 for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the
27 department determined under [section 8] that the person was not reasonably expected to be discharged
28 and return home; or

29 (b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended,
30 when the item or service was provided or when the insurance premium, deductible, or coinsurance was

1 paid.

2 (4) "Recovery" means legal action brought for the payment or repayment of recoverable medical
3 assistance or amounts of money paid for other purposes.

4

5 **NEW SECTION. Section 2. Period of ineligibility for medical assistance when assets disposed of**
6 **for less than fair market value -- undue hardship exception -- department to adopt rules.** (1) The
7 department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal
8 regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance
9 under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any
10 assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42
11 U.S.C. 1396p, as may be amended, or by other federal law.

12 (2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient
13 under this section to the extent that the department determines, in accordance with procedures specified
14 by department rule, that the denial of eligibility would cause an undue hardship as defined by department
15 rule.

16 (3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
17 amended, and that implement federal regulations and policies to implement this section. The rules adopted
18 under this section must include but are not limited to rules addressing the following:

- 19 (a) a description of the circumstances considered to constitute an undue hardship;
20 (b) the procedures by which an individual may seek an undue hardship exception;
21 (c) the persons entitled to an undue hardship exception; and
22 (d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of
23 an undue hardship exception.

24 (4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended
25 to prohibit the department from adopting rules consistent with federal law that provide for a period of
26 ineligibility for public assistance programs other than medical assistance when an applicant or recipient
27 directly or indirectly disposes of assets for less than fair market value.

28

29 **Section 3.** Section 53-6-143, MCA, is amended to read:

30 **"53-6-143. Limitations on Medical assistance liens and recoveries.** (1) **Except as provided in**

1 this section, the department may not impose a lien upon the property of an applicant for or recipient of
 2 medical assistance may not be required to execute an agreement creating a lien on his real property.

3 (2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed
 4 against the real or personal property of ~~an individual~~ a medicaid applicant or recipient prior to his the
 5 applicant's or recipient's death for recovery of medical assistance paid or to be paid on his behalf under
 6 this chapter only:

7 (a) pursuant to a judgment of a court for recovery of medical assistance ~~incorrectly~~ paid on behalf
 8 of the recipient; ~~or~~

9 (b) on a third-party recovery as provided in 53-2-612; or

10 (c) as provided in [sections 8 through 25].

11 (3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only:

12 ~~(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a~~
 13 ~~recipient for services provided before he reached age 65; or~~

14 ~~(ii) as provided in [sections 5 through 7], [sections 8 through 25], or 53-2-612 or as provided in~~
 15 ~~a written agreement between the department and the recipient or the recipient's representative pursuant~~
 16 ~~to 42 U.S.C. 1382b(b).~~

17 ~~(b) The department may recover under 53-2-611 only:~~

18 ~~(i) after the death of the recipient's surviving spouse, if any; and~~

19 ~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and~~
 20 ~~totally disabled.~~

21 ~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which~~
 22 ~~each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974,~~
 23 ~~shall be prorated to reimburse the county share of participation. The provisions of this section are hereby~~
 24 ~~extended to provide for the recovery of all medical assistance paid under this part and likewise to all~~
 25 ~~medical aid to the aged assistance paid by the department of social and rehabilitation services during the~~
 26 ~~period of time July 1, 1965, through June 30, 1967.~~

27 (4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and
 28 this section, the department may pursue recovery under any section or combination of sections as may be
 29 applicable in a particular case. However, the department may not recover pursuant to [sections 5 through
 30 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf

1 of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact
 2 that the department has or may have a lien on particular property does not preclude the department from
 3 pursuing recovery under another section against other assets of the recipient or assets of another person
 4 as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."

5
 6 **Section 4.** Section 53-6-144, MCA, is amended to read:

7 **"53-6-144. Relative's responsibility.** ~~The~~ Except as otherwise provided in [sections 5 through 26]
 8 and the provisions of other parts of this title, as amended, notwithstanding, the only relatives that ~~can~~ may
 9 be held responsible for payment of medical assistance under the program are the husband or wife of the
 10 individual, the parents of children under ~~age 18~~ years of age, and the parents of blind or disabled persons
 11 over ~~age 18~~ years of age."

12
 13 **NEW SECTION. Section 5. Recovery of medicaid benefits after recipient's death.** (1) After the
 14 death of a recipient, the department shall execute and present a claim:

15 (a) against the recipient's estate, within the time specified in the published notice to creditors in
 16 the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the
 17 recipient; and

18 (b) against a person who has received property of the recipient by distribution or survival for an
 19 amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the
 20 property received by the person from the recipient by distribution or survival, whichever is less. The
 21 amount recoverable from a person with respect to property of the recipient must be reduced by the value
 22 of any property transferred to the person for less than full market value for which a period of ineligibility
 23 was imposed under [section 2] against the recipient during the recipient's life. The department may bring
 24 an action in district court to collect upon a claim under this subsection (1)(B).

25 (2) A department claim under subsection (1) must include notice of the right to seek an undue
 26 hardship exception under rules adopted by the department in accordance with subsection (7).

27 (3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by
 28 law, a department claim against an estate is not barred for lack of timely presentation if it is presented in
 29 the probate proceeding within the time specified in the published notice to creditors.

30 (b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the

1 later of the recipient's death or the closing of the recipient's estate.

2 (4) (a) For purposes of this section, property of a deceased recipient received by distribution or
3 survival is any real or personal property or other assets in which the recipient had any right, title, or interest
4 immediately prior to the time of death, including but not limited to assets passing to one or more survivors,
5 heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right
6 of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For
7 purposes of this section, property is not received by distribution or survival to the extent that the person
8 received the property or property interest for consideration equal to the fair market value of the property
9 or property interest received.

10 (b) Property received by distribution includes but is not limited to:

11 (i) property from a deceased recipient's estate distributed to a person through a probated estate
12 or a small estate administration procedure; and

13 (ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a
14 person through any other procedure or when a legal procedure for distribution has not been followed.

15 (c) Assets of a deceased recipient's estate and property of a deceased recipient received by
16 distribution or survival are not exempt from recovery under this section because the assets or property were
17 or may have been considered by the department as exempt income or resources for the purpose of
18 determining eligibility for medical assistance during the recipient's lifetime.

19 (5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect
20 to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department
21 may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and
22 to other affected persons.

23 (b) An estate or other person is not entitled to a reduction or waiver of the department's claim on
24 the grounds that there is or may be another person from whom recovery may be made under this section.

25 (6) The department may waive recovery under this section if it determines that recovery would not
26 be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection,
27 the department may consider but is not limited to consideration of the following factors:

28 (a) the estimated cost of recovery;

29 (b) the amount reasonably likely to be recovered;

30 (c) the likelihood that recovery by the department will cause a person to become eligible for public

1 assistance; and

2 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
3 issues that may recur with respect to the administration or implementation of this section.

4 (7) (a) Upon presentation or assertion of a claim by the department under this section, the personal
5 representative of the estate or another affected person may apply to the department, in accordance with
6 procedures established by department rule, for a waiver of recovery based on undue hardship. The
7 department shall waive its recovery under this section in whole or in part if it determines that recovery
8 would result in undue hardship as defined by department rule.

9 (b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be
10 amended, and that implement federal regulations and policies, establishing procedures and criteria for undue
11 hardship exceptions. The rules adopted under this section must include but are not limited to rules
12 addressing the following:

13 (i) a description of the circumstances considered to constitute an undue hardship;

14 (ii) the procedures by which an individual may seek an undue hardship exception;

15 (iii) the persons entitled to an undue hardship exception; and

16 (iv) whether an exception is partial or temporary and the circumstances under which partial or
17 temporary exceptions may be granted.

18 (c) If a person is aggrieved by a department determination on an application for an undue hardship
19 exception, the person may assert a claim of entitlement to an undue hardship exception in any court
20 proceeding on a department petition for allowance of an estate claim or for recovery of an amount due
21 under this section. When a person claims entitlement to an undue hardship exception in the proceeding,
22 the court shall make a determination on the claim for an exception based upon the department rules
23 adopted in accordance with this section. Department denial of all or any part of the relief requested in an
24 exception application under this section may be reviewed by a district court only as provided in this
25 subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under
26 the Montana Administrative Procedure Act or the department's rules.

27 (8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the
28 department may collect upon its claim.

29 (b) The department may not recover under this section while there is a surviving spouse of the
30 recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or

1 permanently and totally disabled. This subsection (b) does not preclude the department from recovering
2 from the recipient’s estate after the death of the surviving spouse or child.

3 (9) All money recovered under this section from any source must be distributed to the state general
4 fund and to the United States as required by applicable state and federal laws and regulations.

5
6 **NEW SECTION. Section 6. Payment of certain funds of deceased recipient to**
7 **department.** (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds
8 of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days
9 following the resident’s death, pay those funds to the department.

10 (b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the
11 deceased resident’s personal funds that are held by the nursing facility and that would have been payable
12 to the facility from the resident’s funds. The facility shall pay the remaining funds to the department as
13 required by this section.

14 (c) Funds paid to the department under this section are not considered to be property of the
15 deceased resident’s estate, and [section 5] does not apply to recovery of the funds by the department.

16 (2) For purposes of this section, a nursing facility is holding personal funds of a resident if the
17 facility:

- 18 (a) maintains possession of the funds in the facility; or
- 19 (b) as the recipient’s trustee or representative, has deposited the resident’s funds in an individual
20 or shared account in a financial institution.

21 (3) The department shall apply any funds received under this section proportionately to the federal
22 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
23 by law to the funds.

24
25 **NEW SECTION. Section 7. Payment of excess burial funds or assets to department.** (1) After the
26 death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person,
27 including but not limited to the decedent’s spouse, heir, devisee, or personal representative, who holds
28 funds or other property **IN EXCESS OF \$5,000 IN VALUE** that was specifically designated and set aside
29 for paying for the disposition of the decedent’s remains and for related expenses shall, after paying for the
30 disposition and related expenses, pay all remaining funds to the department within 30 days following the

1 burial, cremation, or other final disposition of the decedent's remains. The funds must be paid to the
 2 department regardless of any provision in a written contract, trust, or other agreement entered into on or
 3 after [the effective date of this section], directing a different disposition of the funds. Funds paid to the
 4 department under this section are not considered to be property of the decedent's estate, and [section 5]
 5 does not apply to recovery of the funds by the department.

6 (2) The department shall apply any funds received under this section proportionately to the federal
 7 and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled
 8 by law to the funds.

9
 10 **NEW SECTION. Section 8. Department lien upon real property of certain medicaid recipients --**

11 **conditions.** (1) Following notice and opportunity for hearing as provided in [section 9], the department
 12 shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable
 13 medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf
 14 of the recipient prior to, on, or after the imposition of the lien if:

15 (a) the recipient has been admitted to a nursing facility, an intermediate care facility for the
 16 mentally retarded, or an institution for mental disease;

17 (b) the property upon which a lien is being imposed is the recipient's home and the home is not
 18 lawfully resided in by:

19 (i) the recipient's spouse;

20 (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled;

21 or

22 (iii) the recipient's sibling ~~who has an ownership interest and equity in the recipient's home and~~ who
 23 was residing in the recipient's home for a period of at least ~~4-year~~ **18 MONTHS** immediately prior to the
 24 recipient's institutionalization; and

25 (c) the recipient has been determined by the department, pursuant to subsection (2), to be
 26 permanently institutionalized.

27 (2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department
 28 determines that the recipient cannot reasonably be expected to be discharged from the facility and to return
 29 home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged
 30 from the facility and return home if the recipient or a representative of the recipient declares that there is

1 no intent to return home or if the recipient has been institutionalized for 6 months or longer without a
 2 discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge
 3 plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but
 4 failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation
 5 of discharge from the facility and a return home has the burden of demonstrating the reasonable
 6 expectation. The reasonable expectation must be established based upon medical evidence and medical
 7 opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be
 8 discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable
 9 expectation of discharge from the facility and a return home.

10 (3) For purposes of this section, real property of a recipient includes any interest in real property
 11 that may be subject to a judgment lien.

12
 13 **NEW SECTION. Section 9. Notice of intent to impose lien -- opportunity for hearing.** Before
 14 imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its
 15 determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing
 16 pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

17
 18 **NEW SECTION. Section 10. Contents of lien document -- scope of obligation secured.** (1) The
 19 lien must contain the name and address of the recipient who owns an interest in the property, a legal
 20 description of the property, and an address and telephone number of the office or representative of the
 21 department who can provide more information about the lien. The lien applies only to the property
 22 described in the lien.

23 (2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be
 24 executed by an authorized agent or employee of the department. The execution must be acknowledged
 25 as provided in 70-21-203.

26 (3) The lien need not state the specific amount of medical assistance repayment owed. The lien
 27 is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien
 28 states that:

29 (a) the lien is imposed under ~~this section~~ **[SECTIONS 8 THROUGH 25]** to secure the described
 30 property for recovery of medical assistance paid on behalf of the recipient prior to, on, and after the date

1 of the lien; and

2 (b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of
3 any right, title, or interest of the recipient in the property or upon the recipient's death.

4

5 **NEW SECTION. Section 11. Filing of lien -- effect of filing -- priority -- renewal -- dissolution of lien.**

6 (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property
7 is located.

8 (2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent
9 purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier
10 unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The
11 lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded
12 encumbrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer,
13 or exchange of the property by the recipient is considered a relinquishment of any homestead exemption
14 under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

15 (3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when
16 the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is
17 considered the judgment creditor and the recipient OR THE RECIPIENT'S SPOUSE OR SUCCESSOR IN
18 INTEREST is considered the judgment debtor.

19 (4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released,
20 or dissolved. The department may renew a lien for one or more additional 6-year ~~period~~ PERIODS.

21 (5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no
22 longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following
23 the recipient's discharge and return home, the department shall upon written request file a release of lien
24 in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the
25 department from recovering under [section 5, 6, or 7].

26 (6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property
27 that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the
28 survivor, subject to the lien imposed pursuant to [section 8].

29

30 **NEW SECTION. Section 12. Recovery of medical assistance secured by lien -- application for**

1 **issuance of writ of execution.** (1) After the recipient's death or upon the sale, transfer, or exchange of
2 any right, title, or interest of the recipient in the property, the department may file with the clerk of the
3 district court in the county in which the real property is located an application for issuance of a writ of
4 execution for levy on the real property described in the lien. The levy may be for the amount of recoverable
5 medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including
6 amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do
7 not include attorney fees.

8 (2) The application for the writ must be sworn and must contain the following:

9 (a) the name of the recipient, a legal description of the real property, and a description of the
10 recipient's interest in the property;

11 (b) a statement that the department has imposed a lien upon the property under [section 8];

12 (c) a statement that the lien complies with the requirements of [sections 8 through 25];

13 (d) the date upon which the lien was filed and the office in which it was filed;

14 (e) a description of the sale, transfer, ~~or exchange,~~ OR OTHER EVENT that entitles the department
15 to recover ~~or a statement that the recipient or, if applicable, the recipient's spouse has died and the date~~
16 ~~of the death;~~

17 (f) a statement that the lien has not dissolved under [section 11(5)];

18 (g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance
19 costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that
20 additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

21 (h) a statement that the total amount due has not been paid as of the date of the application for
22 the writ;

23 (i) a statement that recovery is not prohibited by this section;

24 (j) the names and addresses of all persons who have a recorded interest in the property, including
25 a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder;
26 and

27 (k) a request that a writ of execution be issued for sale of the described property if an action is not
28 filed within the time provided for in [section 14].

29 (3) The filing of an application under this section for a writ of execution is not the filing of a legal
30 action, and the requirements applicable to legal actions do not apply to the application or application

1 proceedings.

2

3 **NEW SECTION. Section 13. Notice of application -- proof of notice -- request for issuance of writ**
 4 **of execution.** (1) The department shall provide notice, as required by this section, of the filing of the
 5 application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the
 6 property or residing lawfully on the property.

7 (2) The notice must contain a description of the property and must state that the department has
 8 a lien under [section 8] upon the described property, that the department has filed an application for a writ
 9 of execution seeking sale of the property, and that a writ will be issued unless an action challenging
 10 issuance of the writ has been filed in accordance with [section 14] within 60 days of the date of mailing
 11 or service of notice or first publication of notice. The department shall include with the notice a copy of
 12 the application for the writ. The notice must also include notice of the right to seek an undue hardship
 13 exception as provided in [section 17].

14 (3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested,
 15 to the name and address stated in the recorded instrument creating each person's interest in the property
 16 or, in the case of a person residing on the property, to the address of the residence on the property.
 17 Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned
 18 to the department and indicates that the notice was received by or on behalf of the addressee.

19 (b) If the return receipt is not returned to the department indicating that the notice was received
 20 by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the
 21 addressee and to personally serve or mail notice to that person.

22 (c) If after the exercise of reasonable diligence the department is unable to locate the person
 23 owning the interest in the property, the department shall publish the notice required by subsection (2) three
 24 times, once each week for 3 successive weeks, in a newspaper published in the county in which the
 25 property is located if a newspaper is published in the county. If a newspaper is not published in the county,
 26 then publication must be in a newspaper having a general circulation in the county.

27 (d) With respect to a person residing lawfully on the property but having no recorded interest in
 28 the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

29 (e) In the alternative, the notice and application may be personally served upon any person entitled
 30 to notice under this section.

1 (4) (a) After giving notice as required by this section, the department shall file with the clerk of
2 court an affidavit describing:

3 (i) the manner in which notice has been provided to each person entitled to notice;

4 (ii) the date of mailing, personal service, or first publication of the notice; and

5 (iii) the date by which each person is required to file an action to challenge issuance of the writ of
6 execution.

7 (b) The department shall attach to the affidavit the return receipt, the affidavit of personal service,
8 the affidavit of publication, or other proof of service of the notice. If no action has been filed within the
9 time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.

10
11 **NEW SECTION. Section 14. Action to challenge issuance of writ of execution.** A person with a
12 recorded interest in OR RESIDING LAWFULLY UPON the real property described in an application filed under
13 [section 12], including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer,
14 mortgagee, or lienholder, or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days
15 of mailing or service of notice or first publication of notice as provided in [section 13], file an action in the
16 district court in the county in which the real property is located challenging the requested issuance of a writ
17 of execution. The court shall determine the validity or invalidity of the department's lien and order
18 appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.

19
20 **NEW SECTION. Section 15. Department right of recovery -- limitations.** (1) Except as provided
21 in [~~section~~ SECTIONS 17 AND 19] and this section, the department may collect upon its lien as provided
22 in [sections 8 through 25].

23 (2) The department may not recover upon a lien imposed on the recipient's home under [section
24 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least
25 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This
26 subsection does not preclude the department from recovering under [section 5, 6, or 7].

27 (3) The department may not recover on a lien imposed under [section 8] while there is a surviving
28 spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age,
29 blind, or permanently and totally disabled. This subsection does not preclude the department from later
30 recovery in accordance with [section 18].

1 **NEW SECTION. Section 16. Payment of amount due -- periodic payments -- substitute security.**

2 (1) If the total amount due to the department to satisfy a lien imposed under [sections 8 through 25] is
3 paid, the department may not file an application under [section 12], shall withdraw its application if the
4 application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

5 (2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees
6 of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may
7 agree with the recipient's surviving spouse to accept substitute security and partial payment. The
8 department may agree to periodic ~~payment of~~ PAYMENTS OR substitute security if the terms of agreement,
9 including security for repayment, are acceptable to the department and if the agreement does not reduce
10 the amount due or the likelihood of recovering the amount due. The department may delay filing an
11 application for issuance of a writ of execution for purposes of conducting negotiations for an agreement
12 in lieu of execution.

13

14 **NEW SECTION. Section 17. Waiver of recovery in cases of undue hardship -- rulemaking.** (1) (a)
15 A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any
16 other interested person may apply to the department, in accordance with procedures established by
17 department rule, for a waiver of recovery because of undue hardship. The department shall waive its
18 recovery under this section, in whole or in part, if it determines that recovery would result in undue
19 hardship as defined by department rule.

20 (b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and
21 implementing federal regulations and policies, establishing procedures and criteria for granting undue
22 hardship exceptions under this section. The rules must include but are not limited to rules addressing the
23 following:

- 24 (i) a description of the circumstances considered to constitute an undue hardship;
25 (ii) the procedures by which an individual may seek an undue hardship exception;
26 (iii) the persons entitled to an undue hardship exception; and
27 (iv) whether an exception is partial or temporary and the circumstances under which a partial or
28 temporary exception may be granted.

29 (c) A person aggrieved by a department determination on an application for an undue hardship
30 exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section

1 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part
2 of that action, the court shall make a determination on the undue hardship claim in accordance with the
3 department's rules adopted pursuant to this section. Department denial of all or any part of the relief
4 requested in an application for an undue hardship exception under this section may be reviewed by a
5 district court only through filing of an action as provided in this subsection (c). Denial does not grant a
6 right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure
7 Act or the department's rules.

8 (2) The department may waive recovery of recoverable medical assistance secured by a lien
9 imposed under [section 8] if the department determines that recovery would not be cost-effective. In
10 determining whether recovery would be cost-effective, the department may consider but is not limited to
11 consideration of the following factors:

12 (a) the estimated cost of recovery;

13 (b) the amount reasonably likely to be recovered;

14 (c) the likelihood that recovery by the department will cause a person to become eligible for public
15 assistance; and

16 (d) the importance of the case or the issues in the case and the need for judicial interpretation of
17 issues that may recur with respect to the administration or implementation of [sections 8 through 25].
18

19 **NEW SECTION. Section 18. Delay in recovery -- sale subject to lien.** (1) If the department is
20 precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the
21 department shall maintain the lien in place and upon elimination of the condition that precluded recovery,
22 the department may recover under this section. The department may not file an application for issuance
23 of a writ of execution to recover under this subsection more than 3 years after elimination of the last
24 condition that precluded recovery.

25 (2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections
26 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien
27 remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also
28 subject to the lien.
29

30 **NEW SECTION. Section 19. Spouse's limited exemption from lien.** (1) Subject to Title 70,

1 chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse
 2 resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange
 3 of the home, entitled to an exemption from the department's lien in an amount determined in accordance
 4 with this section. The exemption is in the form of:

5 (a) a partial release of the department's lien if the exemption amount is less than the full amount
 6 of the department's lien; or

7 (b) a full release of the department's lien if the exemption amount is equal to or greater than the
 8 full amount of the department's lien.

9 (2) The amount of the exemption is the lesser of an amount equal to:

10 (a) the fair market value of the interest in the home that the surviving spouse received from the
 11 recipient by distribution or survival; or

12 (b) \$100,000 minus the total fair market value of all of the surviving spouse's assets, other than
 13 the interest in the home, that the surviving spouse received from the recipient by distribution or survival.
 14 For purposes of this section, the surviving spouse's assets do not include personal property that is exempt
 15 from execution under Title 25, chapter 13, part 6.

16 (3) The department may by rule require a surviving spouse to file an application for the exemption
 17 and to provide information, documentation, and verification regarding the applicant's assets and the fair
 18 market value of assets. The department shall provide the applicant notice of its determination on the
 19 application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

20 (4) Upon determination by the department that the applicant is entitled to an exemption, the
 21 department shall provide to the applicant an appropriate full or partial release in the amount of the
 22 exemption.

23
 24 **NEW SECTION. Section 20. Issuance of writ of execution by clerk of court.** (1) If the
 25 requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the
 26 property to be levied upon, the amount due as of the date of filing of the application, and a statement that
 27 additional amounts may be due up to and through the date of the sale.

28 (2) The clerk shall issue the writ if:

29 (a) (l) an action has not been filed under [section 14] within 60 days of mailing, service, or first
 30 publication of notice, as provided in [section 13]; ~~or~~

1 ~~(b)(II)~~ the department has filed an affidavit meeting the requirements of [section 13(4)]; and
 2 ~~(e) - (f)(III)~~ the department has filed a sworn application containing the statements required by
 3 [section 12]; or
 4 ~~(f)(B)~~ the court has ordered the issuance of the writ in an action under [section 14].
 5

6 **NEW SECTION. Section 21. Effect of sale -- title acquired.** The purchaser of property pursuant
 7 to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that
 8 the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising
 9 from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property
 10 taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13,
 11 part 8, or other law.
 12

13 **NEW SECTION. Section 22. Disposition of sale proceeds -- application of recovered medical**
 14 **assistance.** (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under
 15 [section 20] must be distributed in the following order:

- 16 (a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section
 17 11(2)];
 18 (b) as payment of any claims under [section 23(3) and (4)];
 19 (c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred
 20 in collection;
 21 (d) to the department for recoverable medical assistance.

22 (2) The department shall apply any funds received under subsection (1)(d) proportionately to the
 23 federal and state shares of recoverable medical assistance.

24 (3) Any excess funds remaining after application of proceeds to recoverable medical assistance
 25 must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.
 26

27 **NEW SECTION. Section 23. Action by department or other person to preserve property subject**
 28 **to lien -- recovery of costs.** (1) The department may, in its discretion, take any action it considers
 29 necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections
 30 8 through 25], including but not limited to the following:

- 1 (a) the payment of any unpaid taxes on the property;
- 2 (b) the purchase or renewal of insurance coverage on the property and the payment of necessary
3 insurance premiums;
- 4 (c) the ordering of and payment for necessary repairs and maintenance on the property; and
- 5 (d) if the property is unoccupied, the rental or lease of the property and the application of any
6 receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining
7 amount toward repayment of recoverable medical assistance.

8 (2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the
9 value of the property are secured by the lien imposed under [section 8] and may be recovered in addition
10 to all other amounts secured by the lien.

11 (3) A person who, after the institutionalization or death of the recipient and after the
12 institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's
13 insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or
14 recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim
15 against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for
16 recovery of any amounts paid for those purposes. The claim must be supported by written documentation
17 that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and
18 items purchased with each payment. A claim for reimbursement made under this subsection is prior to the
19 department's lien imposed under [section 8].

20 (4) The amount of a claim made under subsection (3) must be reduced by:

- 21 (a) the amount of any rents and profits from the property paid after the institutionalization or death
22 of the recipient and the institutionalization of the recipient's surviving spouse, if any;
- 23 (b) the value of any property that the person with a claim under subsection (3) will receive by
24 distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and
- 25 (c) the value of any property that the person with a claim under subsection (3) will receive by
26 distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

27

28 **NEW SECTION. Section 24. Time for filing of application.** Except as provided in [section 18], the
29 department may not file an application for issuance of a writ of execution to recover upon a lien imposed
30 under [sections 8 through 25] more than 3 years after the latest of:

- 1 (1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;
- 2 (2) the death of the recipient; or
- 3 (3) the death of the recipient's surviving spouse.

4
5 **NEW SECTION. Section 25. Coordination of lien with other medical assistance recoveries.** The
6 existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8
7 through 25] is invalid for any reason or is unenforceable under [section 17] does not preclude the
8 department from recovering under [section 5, 6, or 7].

9
10 **NEW SECTION. Section 26. Rulemaking authority.** The department may adopt rules to implement
11 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal
12 law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

13
14 **NEW SECTION. Section 27. Repealer.** Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are
15 repealed.

16
17 **NEW SECTION. Section 28. Codification instruction.** [Sections 1, 2, and 5 through 26] are
18 intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53,
19 chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

20
21 **NEW SECTION. Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
23 applications, the part remains in effect in all valid applications that are severable from the invalid
24 applications.

25
26 **NEW SECTION. Section 30. Retroactive applicability.** [Section 2] applies retroactively, within the
27 meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of
28 determining eligibility for medical assistance on or after July 1, 1995.

29
30 **NEW SECTION. Section 31. Applicability.** (1) [Sections 3 through 7] apply to medical assistance

1 recipients who die on or after [the effective date of those sections].

2 (2) [Sections 2 and 8 through 25] apply as a condition of medical assistance eligibility or
3 continuation of medical assistance eligibility after [the effective date of those sections].

4

5 NEW SECTION. Section 32. Effective dates. (1) [Sections 1, ~~2, 27~~ 28 through 31, and this
6 section] are effective on passage and approval.

7 (2) [Sections ~~3 through 26~~ 2 THROUGH 27] are effective July 1, 1995.

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