

1 ^{Fisher} SENATE BILL NO. 293
2 INTRODUCED BY Harding Cobb Primm Swanson

3 ~~HARP~~ BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4 ~~GRINDS~~ Swanson Primm Harding

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID
6 FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR
7 MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH
8 APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT
9 IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING
10 CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID
11 APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND
12 ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING
13 THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN
14 MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH
15 APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104,
16 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE
17 DATES."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
21 NEW SECTION. **Section 1. Definitions.** As used in this part, unless expressly provided otherwise,
22 the following definitions apply:

23 (1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard
24 of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical
25 assistance program when the disregard or failure results or may result in an incorrect determination that
26 a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments
27 to which the provider is not entitled.

28 (2) "Applicant" means a person:

29 (a) who has submitted an application for determination of medicaid eligibility to a medicaid agency
30 on the person's own behalf or on behalf of another person; or

1 (b) on whose behalf an application has been submitted.

2 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under
3 the medicaid program.

4 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form,
5 that is used to claim specific services or items as payable or reimbursable under the medicaid program or
6 that states income, expense, or other information that is or may be used to determine entitlement to or the
7 rate of payment under the medicaid program. The term includes any documents submitted as part of or
8 in support of the claim.

9 (5) "Department" means the department of social and rehabilitation services provided for in
10 2-15-2201.

11 (6) "Document" means any application, claim, form, report, record, writing, or correspondence,
12 whether in written, electronic, magnetic, or other form.

13 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving
14 purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid
15 payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not
16 limited to any conduct or omission under the medicaid program that would constitute a criminal offense
17 under Title 45, chapter 6 or 7.

18 (8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter
19 6.

20 (9) "Medicaid agency" means any agency or entity of state, county, or local government that
21 administers any part of the medicaid program, whether under direct statutory authority or under contract
22 with an authorized agency of the state or federal government. The term includes but is not limited to the
23 department, the department of health and environmental sciences, the department of corrections and
24 human services, county offices of human services and public welfare, and other local and state agencies
25 and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims
26 processing or payment, utilization review, case management, provider certification, investigation, or other
27 administration of the medicaid program.

28 (10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or
29 wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by
30 the patient or the patient's designated representative. Misappropriation of patient property includes but

1 is not limited to any conduct with respect to a patient's property that would constitute a criminal offense
2 under Title 45, chapter 6, part 3.

3 (11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or
4 unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or
5 mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a
6 patient that would constitute a criminal offense under Title 45, chapter 5.

7 (12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission,
8 to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental
9 illness when an omission is not caused by factors beyond the person's control or by good faith errors in
10 judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would
11 constitute a criminal offense under 45-5-208.

12 (13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other
13 entity or business association that has enrolled or applied to enroll as a provider of services or items under
14 the medical assistance program established under this part.

15 (14) "Recipient" means a person:

16 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether
17 or not the person actually has received any benefits; or

18 (b) who actually receives medicaid benefits, whether or not determined eligible.

19 (15) (a) "Records" means medical, professional, business, or financial information and documents,
20 whether in written, electronic, magnetic, microfilm, or other form:

21 (i) pertaining to the provision of treatment, care, services, or items to a recipient;

22 (ii) pertaining to the income and expenses of the provider; or

23 (iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment
24 or reimbursement under the medicaid program.

25 (b) The term includes all records and documents, regardless of whether the records are required by
26 medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

27

28 **NEW SECTION. Section 2. Medicaid fraud control unit.** (1) There is a medicaid fraud control unit
29 in the department of justice. The unit is under the supervision and control of the attorney general and,
30 subject to the availability of appropriated funds, consists of the agents and employees of the department

1 of justice whom the attorney general considers necessary and appropriate, including but not limited to:

2 (a) persons qualified by education, training, experience, and high professional competence in
3 criminal and civil investigative procedures;

4 (b) at least one person licensed to practice law in Montana and qualified by education, training,
5 experience, and high professional competence to prosecute crimes; and

6 (c) auditors and other additional professional and support staff.

7 (2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103.

8 Agents designated by the attorney general have peace officer status and authority, including but not limited
9 to search, seizure, and arrest.

10

11 **NEW SECTION. Section 3. Powers and duties of medicaid fraud control unit.** (1) The medicaid
12 fraud control unit shall:

13 (a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants,
14 recipients, providers, or other persons under the medical assistance program established under this chapter,
15 including but not limited to cases referred by the department;

16 (b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property
17 by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal
18 proceedings or refer the complaint to another state agency for action;

19 (c) refer to the department for collection and, when appropriate, consideration and imposition of
20 appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments,
21 fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying
22 out its activities;

23 (d) communicate and cooperate with and, subject to applicable confidentiality laws, provide
24 information to other state and federal agencies involved in the investigation and prosecution of health care
25 fraud, abuse, and other improper activities related to the medicaid program;

26 (e) transmit to other state and federal agencies, in accordance with law reports of convictions,
27 copies of judgments and sentences imposed and other information and documents for purposes of program
28 exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or
29 assistance programs; and

30 (f) recommend to state agencies appropriate or necessary adoption or revision of statutes,

1 regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the
2 medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper
3 activities under the medicaid program.

4 (2) The medicaid fraud control unit may:

5 (a) initiate criminal prosecutions related to the medicaid program in any court of competent
6 jurisdiction in the state of Montana;

7 (b) upon written request, obtain information and records from applicants, recipients, and providers;

8 (c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas
9 under Title 46, chapter 4, part 3;

10 (d) subject to applicable federal confidentiality laws and regulations and for purposes related to any
11 investigation or prosecution related to the medicaid program, obtain from the department, county welfare
12 and human services offices, and other local, county, or state government departments or agencies records
13 and other information, including but not limited to applicant and recipient applications, provider enrollment
14 forms, claims and reports, individual or entity tax returns, or other information provided to or in the
15 possession of the department of revenue or the state auditor;

16 (e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or
17 imposition of penalties, restrictions, or sanctions;

18 (f) enter into agreements with the department and other state and federal agencies in furtherance
19 of the unit's mission; and

20 (g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and
21 any implementing federal regulations and policies that require the state to operate a medicaid fraud control
22 unit.

23

24 **NEW SECTION. Section 4. Cooperation of governmental agencies with medicaid fraud control unit.**

25 All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit
26 and its agents and employees to effectuate the purposes of the unit.

27

28 **NEW SECTION. Section 5. Permitted disclosure of information obtained in medicaid fraud control**

29 **unit investigations.** Records, documents, and other information obtained in the course of an investigation
30 by the medicaid fraud control unit or its agents, employees, or attorneys may be disclosed:

1 (1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title
2 44, chapter 5; and

3 (2) to a medicaid agency for purposes related to administration of the medicaid program.
4

5 **NEW SECTION. Section 6. Truthfulness, completeness, and accuracy of submissions to medicaid**
6 **agencies.** (1) A person who submits to a medicaid agency an application, claim, report, document, or other
7 information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as
8 a provider, or the right to or the amount of payment under the medicaid program is considered to represent
9 to the department, to the best of the person's knowledge and belief, that the item is genuine and that its
10 contents, including all statements, claims, and representations contained in the document, are true,
11 complete, accurate, and not misleading.

12 (2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness,
13 and accuracy of all applications, claims, reports, documents, and other information and of all statements
14 and representations made or submitted, or authorized by the provider to be made or submitted, to the
15 department for purposes related to the medicaid program. The duty applies whether the applications,
16 claims, reports, documents, other information, statements, or representations were made or submitted, or
17 authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant
18 or recipient being served by the provider.

19 (b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to
20 the department or its agents or employees for payment or reimbursement under the medicaid program is
21 one for which the provider is entitled to receive payment and that the service or item is provided and billed
22 according to all applicable medicaid requirements, including but not limited to identification of the
23 appropriate procedure code or level of service and provision of the service by a person, facility, or other
24 provider entitled to receive medicaid payment for the particular service.

25 (3) A person is considered to have known that a claim, statement, or representation related to the
26 medicaid program was false, incomplete, inaccurate, or misleading if the person knew, or by virtue of the
27 person's position, authority, or responsibility should have known, of the falsity, incompleteness, inaccuracy,
28 or misleading nature of the claim, statement, or representation.

29 (4) A person is considered to have made or to have authorized to be made a claim, statement, or
30 representation if the person:

1 (a) had the authority or responsibility to:

2 (i) make the claim, statement, or representation;

3 (ii) supervise another who made the claim, statement, or representation; or

4 (iii) authorize the making of the claim, statement, or representation, whether by operation of law,
5 business or professional practice, or office policy or procedure; and

6 (b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result,
7 the false, incomplete, inaccurate, or misleading statement was made.

8 (5) (a) There is an inference that a person who signs or submits a document to a medicaid agency
9 on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the
10 provider's direction.

11 (b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile,
12 computer-generated and typed, or block-letter signatures.

13

14 **NEW SECTION. Section 7. Medicaid fraud.** (1) A person commits the offense of medicaid fraud
15 when:

16 (a) the person obtains a medicaid payment or benefit for the person or another person by purposely
17 or knowingly:

18 (i) making, submitting, or authorizing the making or submitting of a false, incomplete, inaccurate,
19 or misleading medicaid claim, statement, representation, application, or document to a medicaid agency;

20 or

21 (ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement,
22 representation, application, or document under the medicaid program for a service or item when the person
23 knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules,
24 or policies to medicaid payment or benefit for the service or item or for the amount of payment requested
25 or claimed;

26 (b) the person purposely or knowingly:

27 (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback,
28 bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing
29 services or items for which payment may be made under the medicaid program or in return for purchasing,
30 leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or

1 items from a provider for which payment may be made under the medicaid program; or

2 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient
3 to another provider for the furnishing of services or items for which payment may be made under the
4 medicaid program; or

5 (c) the person, with respect to a managed care contract, health maintenance organization contract,
6 or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to
7 provide covered medically necessary services to eligible recipients as required by the contract.

8 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or
9 federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is
10 considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same
11 protections allowed under federal laws and regulations.

12 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance
13 upon the written authorization of the department.

14 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
15 not exceeding \$500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
16 jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined
17 \$500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A
18 person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county
19 jail for a term not less than 30 days or more than 1 year.

20 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
21 exceeding \$500 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the
22 value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or
23 both.

24 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of
25 payments or benefits involved is the greater of the value of medicaid payments or benefits received as a
26 result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

27 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
28 transaction may be aggregated in determining the value involved.

29 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in
30 the medicaid program:

1 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
2 terminated from participation in the medical assistance program;

3 (ii) for any period of time not less than 3 years for a second offense, or the person may be
4 permanently terminated from participation in the medical assistance program; or

5 (iii) permanently for a third offense.

6 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not
7 entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the
8 services or items involved and shall repay to the medicaid program any payments or benefits obtained by
9 any person for the services or items involved.

10 (6) The establishment of the criminal offenses specified in this section does not preclude the
11 application of any other provision of law.

12

13 **Section 8.** Section 45-2-101, MCA, is amended to read:

14 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken
15 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
16 the following definitions apply in this title:

17 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
18 communication, and when relevant, a failure or omission to take action.

19 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
20 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
21 in its application to an individual.

22 (3) "Another" means a person or persons, as defined in this code, other than the offender.

23 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
24 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
25 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
26 of public measures that a candidate engages to support or oppose.

27 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
28 includes mental illness or impairment.

29 (6) "Cohabit" means to live together under the representation of being married.

30 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish

1 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
2 same offense or that affects the same person or the same persons or the property of the same person or
3 persons.

4 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions
5 by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,
6 software, or communication facilities that are connected or related to that device in a system or network.

7 (9) "Computer network" means the interconnection of communication systems between computers
8 or computers and remote terminals.

9 (10) "Computer program" means an instruction or statement or a series of instructions or
10 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of
11 a computer or computer system and causes it to perform specified functions.

12 (11) "Computer services" include but are not limited to computer time, data processing, and
13 storage functions.

14 (12) "Computer software" means a set of computer programs, procedures, and associated
15 documentation concerned with the operation of a computer system.

16 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
17 software, or other related computer equipment.

18 (14) "Conduct" means an act or series of acts and the accompanying mental state.

19 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
20 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
21 competent jurisdiction authorized to try the case without a jury.

22 (16) "Correctional institution" means the state prison, county or city jail, or other institution for the
23 incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

24 (17) "Deception" means knowingly to:

25 (a) create or confirm in another an impression that is false and that the offender does not believe
26 to be true;

27 (b) fail to correct a false impression that the offender previously has created or confirmed;

28 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

29 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other
30 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is

1 not a matter of official record; or

2 (e) promise performance that the offender does not intend to perform or knows will not be
3 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

4 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
5 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
6 or occupation.

7 (19) "Deprive" means to withhold property of another:

8 (a) permanently;

9 (b) for such a period as to appropriate a portion of its value;

10 (c) with the purpose to restore it only upon payment of reward or other compensation; or

11 (d) to dispose of the property and use or deal with the property so as to make it unlikely that the
12 owner will recover it.

13 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
14 of the same sex or any form of sexual intercourse with an animal.

15 (21) "Document" means, with respect to offenses involving the medicaid program, any application,
16 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm,
17 or other form.

18 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
19 imprisonment in the state prison for any term exceeding 1 year.

20 ~~(22)~~(23) "Forcible felony" means any felony that involves the use or threat of physical force or
21 violence against any individual.

22 ~~(23)~~(24) A "frisk" is a search by an external patting of a person's clothing.

23 ~~(24)~~(25) "Government" includes any branch, subdivision, or agency of the government of the state
24 or any locality within it.

25 ~~(25)~~(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person
26 affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected
27 person is interested.

28 ~~(26)~~(27) A "house of prostitution" means any place where prostitution or promotion of prostitution
29 is regularly carried on by one or more persons under the control, management, or supervision of another.

30 ~~(27)~~(28) "Human being" means a person who has been born and is alive.

1 ~~(28)~~(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from
2 being in the possession of a person subject to official detention.

3 ~~(29)~~(30) "Inmate" means a person who engages in prostitution in or through the agency of a house
4 of prostitution.

5 ~~(30)~~(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter
6 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more
7 of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
8 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
9 of alcohol by volume.

10 ~~(31)~~(32) An "involuntary act" means any act that is:

- 11 (a) a reflex or convulsion;
12 (b) a bodily movement during unconsciousness or sleep;
13 (c) conduct during hypnosis or resulting from hypnotic suggestion; or
14 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
15 either conscious or habitual.

16 ~~(32)~~(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled
17 by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
18 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
19 to attend as a prospective juror.

20 ~~(33)~~(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance
21 described by a statute defining an offense when the person is aware of the person's own conduct or that
22 the circumstance exists. A person acts knowingly with respect to the result of conduct described by a
23 statute defining an offense when the person is aware that it is highly probable that the result will be caused
24 by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
25 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such
26 as "knowing" or "with knowledge", have the same meaning.

27 ~~(34)~~(35) "Medicaid" means the Montana medical assistance program provided for in Title 53,
28 chapter 6.

29 ~~(35)~~(36) "Medicaid agency" has the meaning in [section 1].

30 ~~(36)~~(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a

1 recipient under the medicaid program.

2 (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,
3 or other form:

4 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
5 program; or

6 (ii) that states income, expense, or other information that is or may be used to determine
7 entitlement to or the rate of payment under the medicaid program.

8 (b) The term includes any related documents submitted as a part of or in support of the claim.

9 (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders
10 the person incapable of appreciating the nature of the person's own conduct.

11 (35)(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of
12 appreciating or controlling the person's own conduct as a result of the influence of an intoxicating
13 substance.

14 (36)(41) "Misdemeanor" means an offense in which the sentence imposed upon conviction is
15 imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is
16 imprisonment in the state prison for any term of 1 year or less.

17 (37)(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance
18 described by a statute defining an offense when the person consciously disregards a risk that the result will
19 occur or that the circumstance exists or when the person disregards a risk of which the person should be
20 aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree
21 that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would
22 observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack
23 of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

24 (38)(43) "Obtain" means:

25 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
26 offender or to another; and

27 (b) in relation to labor or services, to secure the performance of the labor or service.

28 (39)(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away,
29 or the sale, conveyance, or transfer of title to, interest in, or possession of property.

30 (40)(45) "Occupied structure" means any building, vehicle, or other place suitable for human

1 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
2 present. Each unit of a building consisting of two or more units separately secured or occupied is a separate
3 occupied structure.

4 ~~(41)~~(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted,
5 or punished for a public offense.

6 ~~(42)~~(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
7 authorized. Offenses are classified as felonies or misdemeanors.

8 ~~(43)~~(48) "Official detention" means imprisonment resulting from a conviction for an offense,
9 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer
10 pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the
11 protection of the welfare of the person detained or for the protection of society. Official detention does not
12 include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest
13 unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

14 ~~(44)~~(49) "Official proceeding" means a proceeding heard or that may be heard before any
15 legislative, judicial, administrative, or other governmental agency or official authorized to take evidence
16 under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony
17 or deposition in connection with the proceeding.

18 ~~(45)~~(50) "Other state" means any state or territory of the United States, the District of Columbia,
19 and the Commonwealth of Puerto Rico.

20 ~~(46)~~(51) "Owner" means a person other than the offender who has possession of or any other
21 interest in the property involved, even though the interest or possession is unlawful, and without whose
22 consent the offender has no authority to exert control over the property.

23 ~~(47)~~(52) "Party official" means a person who holds an elective or appointive post in a political party
24 in the United States by virtue of which the person directs or conducts or participates in directing or
25 conducting party affairs at any level of responsibility.

26 ~~(48)~~(53) "Peace officer" means any person who by virtue of the person's office or public
27 employment is vested by law with a duty to maintain public order or to make arrests for offenses while
28 acting within the scope of the person's authority.

29 ~~(49)~~(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
30 anything else the primary significance of which is economic gain.

1 ~~(50)~~(55) "Person" includes an individual, business association, partnership, corporation,
2 government, or other legal entity and an individual acting or purporting to act for or on behalf of any
3 government or subdivision of government.

4 ~~(51)~~(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
5 to communicate unwillingness to act.

6 ~~(52)~~(57) "Possession" is the knowing control of anything for a sufficient time to be able to
7 terminate control.

8 ~~(53)~~(58) "Premises" includes any type of structure or building and any real property.

9 ~~(54)~~(59) "Property" means any tangible or intangible thing of value. Property includes but is not
10 limited to:

11 (a) real estate;

12 (b) money;

13 (c) commercial instruments;

14 (d) admission or transportation tickets;

15 (e) written instruments that represent or embody rights concerning anything of value, including
16 labor or services, or that are otherwise of value to the owner;

17 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
18 building;

19 (g) electricity, gas, and water;

20 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

21 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
22 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
23 thereof;

24 (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions,
25 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret
26 scientific, technical, merchandising, production, or management information or a secret designed process,
27 procedure, formula, invention, or improvement; and

28 (k) electronic impulses, electronically processed or produced data or information, commercial
29 instruments, computer software or computer programs, in either machine- or human-readable form,
30 computer services, any other tangible or intangible item of value relating to a computer, computer system,

1 or computer network, and any copies thereof.

2 ~~(55)~~(60) "Property of another" means real or personal property in which a person other than the
3 offender has an interest that the offender has no authority to defeat or impair, even though the offender
4 may have an interest in the property.

5 ~~(56)~~(61) "Public place" means any place to which the public or any substantial group has access.

6 ~~(57)~~(62) "Public servant" means any officer or employee of government, including but not limited
7 to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
8 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
9 term "public servant" includes one who has been elected or designated to become a public servant.

10 ~~(58)~~(63) "Purposely"--a person acts purposely with respect to a result or to conduct described by
11 a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause
12 that result. When a particular purpose is an element of an offense, the element is established although the
13 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
14 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

15 ~~(59)~~(64) (a) "Serious bodily injury" means bodily injury that:

16 (i) creates a substantial risk of death;

17 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
18 process of any bodily member or organ; or

19 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
20 or protracted loss or impairment of the function or process of any bodily member or organ.

21 (b) The term includes serious mental illness or impairment.

22 ~~(60)~~(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person
23 of another for the purpose of arousing or gratifying the sexual desire of either party.

24 ~~(61)~~(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by
25 the penis of another person, penetration of the vulva or anus of one person by any body member of another
26 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
27 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
28 penetration, however slight, is sufficient.

29 ~~(62)~~(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise
30 another to commit an offense.

1 ~~(63)~~(68) "State" or "this state" means the state of Montana, all the land and water in respect to
2 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land
3 and water.

4 ~~(64)~~(69) "Statute" means any act of the legislature of this state.

5 ~~(65)~~(70) "Stolen property" means property over which control has been obtained by theft.

6 ~~(66)~~(71) A "stop" is the temporary detention of a person that results when a peace officer orders
7 the person to remain in the peace officer's presence.

8 ~~(67)~~(72) "Tamper" means to interfere with something improperly, meddle with it, make
9 unwarranted alterations in its existing condition, or deposit refuse upon it.

10 ~~(68)~~(73) "Threat" means a menace, however communicated, to:

11 (a) inflict physical harm on the person threatened or any other person or on property;

12 (b) subject any person to physical confinement or restraint;

13 (c) commit any criminal offense;

14 (d) accuse any person of a criminal offense;

15 (e) expose any person to hatred, contempt, or ridicule;

16 (f) harm the credit or business repute of any person;

17 (g) reveal any information sought to be concealed by the person threatened;

18 (h) take action as an official against anyone or anything, withhold official action, or cause the
19 action or withholding;

20 (i) bring about or continue a strike, boycott, or other similar collective action if the person making
21 the threat demands or receives property that is not for the benefit of groups that the person purports to
22 represent; or

23 (j) testify or provide information or withhold testimony or information with respect to another's
24 legal claim or defense.

25 ~~(69)~~(74) (a) "Value" means the market value of the property at the time and place of the crime or,
26 if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within
27 a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the
28 value must be determined as follows:

29 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
30 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of

1 the indebtedness less any portion of the indebtedness that has been satisfied.

2 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
3 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
4 the instrument might reasonably suffer by virtue of the loss of the instrument.

5 (iii) The value of electronic impulses, electronically produced data or information, computer
6 software or programs, or any other tangible or intangible item relating to a computer, computer system,
7 or computer network is considered to be the amount of economic loss that the owner of the item might
8 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
9 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
10 of the item.

11 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
12 standards set forth in subsection ~~(69)(a)~~ (74)(a), its value is considered to be an amount less than \$500.

13 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
14 whether from the same person or several persons, may be aggregated in determining the value of the
15 property.

16 ~~(70)(75)~~ "Vehicle" means any device for transportation by land, water, or air or by mobile
17 equipment, with provision for transport of an operator.

18 ~~(74)(76)~~ "Weapon" means any instrument, article, or substance that, regardless of its primary
19 function, is readily capable of being used to produce death or serious bodily injury.

20 ~~(72)(77)~~ "Witness" means a person whose testimony is desired in any official proceeding, in any
21 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

22
23 **Section 9.** Section 45-2-103, MCA, is amended to read:

24 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate
25 homicide as defined in 45-5-102(1)(b) or an offense ~~which that~~ involves absolute liability, a person is not
26 guilty of an offense unless, with respect to each element described by the statute defining the offense, he
27 a person acts while having one of the mental states described of knowingly, negligently, or purposely in
28 subsections (33), (37), and (58) of 45-2-101.

29 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental
30 state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

1 (3) The existence of a mental state may be inferred from the acts of the accused and the facts and
2 circumstances connected with the offense.

3 (4) If the statute defining an offense prescribes a particular mental state with respect to the offense
4 as a whole without distinguishing among the elements ~~thereof~~ of the offense, the prescribed mental state
5 applies to each ~~such~~ element.

6 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning,
7 or application of the statute defining an offense is not an element of the offense unless the statute clearly
8 defines it as ~~such~~ an element.

9 (6) A person's reasonable belief that ~~his~~ the person's conduct does not constitute an offense is
10 a defense if:

11 (a) the offense is defined by an administrative regulation or order ~~which that~~ is not known to ~~him~~
12 the person and has not been published or otherwise made reasonably available to ~~him~~ the person and ~~he~~
13 if the person could not have acquired ~~such~~ the knowledge by the exercise of due diligence pursuant to facts
14 known to ~~him~~ the person;

15 (b) ~~he~~ the person acts in reliance upon a statute ~~which that~~ later is determined to be invalid;

16 (c) ~~he~~ the person acts in reliance upon an order or opinion of the Montana supreme court or a
17 United States appellate court later overruled or reversed; or

18 (d) ~~he~~ the person acts in reliance upon an official interpretation of the statute, regulation, or order
19 defining the offense made by a public officer or agency legally authorized to interpret ~~such~~ the statute.

20 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless ~~he~~ the person
21 may be convicted of an included offense of which ~~he~~ the person would be guilty if the law were as ~~he~~ the
22 person believed it to be.

23 (8) ~~Any~~ A defense based upon this section is an affirmative defense."
24

25 **Section 10.** Section 45-2-104, MCA, is amended to read:

26 "**45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each
27 element ~~thereof of the offense~~, one of the mental states ~~described in subsections (33), (37), and (58)~~ of
28 knowingly, negligently, or purposely ~~45-2-101~~ only if the offense is punishable by a fine not exceeding
29 \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability
30 for the conduct described."

1 **Section 11.** Section 50-20-109, MCA, is amended to read:

2 "**50-20-109. Control of practice of abortion.** (1) ~~No~~ An abortion may not be performed within the
3 state of Montana:

4 (a) except by a licensed physician;

5 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

6 (c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to
7 preserve the life or health of the mother.

8 (2) An abortion under subsection (1)(c) may only be performed if:

9 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
10 writing by ~~him~~ the physician, setting forth in detail the facts upon which ~~he~~ the physician relies in making
11 ~~such~~ the judgment; and

12 (b) two other licensed physicians have first examined the patient and concurred in writing with
13 ~~such~~ the judgment. The foregoing certification and concurrence ~~is~~ are not required if a licensed physician
14 certifies that the abortion is necessary to preserve the life of the mother.

15 (3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section
16 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
17 "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if
18 necessary to preserve the life or health of the mother.

19 (4) ~~No~~ A physician, facility, or other person or agency ~~shall~~ may not engage in solicitation,
20 advertising, or other form of communication ~~having that has~~ the purpose of inviting, inducing, or attracting
21 ~~any~~ a person to come to ~~such~~ the physician, facility, or other person or agency to have an abortion or to
22 purchase abortifacients.

23 (5) Violation of subsections (1), (2), and (3) ~~of this section~~ is a felony. Violation of subsection (4)
24 ~~of this section~~ is a misdemeanor."

25

26 **Section 12.** Section 53-6-106, MCA, is amended to read:

27 "**53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
28 53-6-108, the following definitions apply:

29 (a) "Department" means the department of social and rehabilitation services.

30 (b) "Health care facility" means a health care facility as defined in 50-5-101.

1 (2) The department and the department of health and environmental sciences may enter into
2 agreements with appropriate federal agencies for the purpose of certifying health care facilities for the
3 Montana medicaid program.

4 (3) The department of health and environmental sciences ~~shall~~ may adopt rules ~~prescribing as~~
5 ~~necessary to prescribe~~ minimum standards for the maintenance and operation of health care facilities,
6 ~~including standards.~~ Standards for the quality of care provided by those facilities receiving reimbursement
7 under the Montana medicaid program. ~~These standards must include, as a minimum, be consistent with~~
8 those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, (42
9 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in Title 42 CFR
10 430, et seq. of the Code of Federal Regulations, as may be amended. The authority to prescribe standards
11 and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department
12 of health and environmental sciences pursuant to Title 50, chapter 5.

13 (4) Standards adopted by the department of health and environmental sciences may include but
14 are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and
15 nutrition, environmental and sanitation, administration, admission policies, patient care planning, training,
16 medication, health services, rehabilitation services, and social services and activities."

17
18 **Section 13.** Section 53-6-107, MCA, is amended to read:

19 **"53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew
20 an agreement with a health care facility that has failed to meet the requirements for certification ~~adopted~~
21 for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable
22 law. The department may also impose sanctions in the form of denial of medicaid payments for new
23 admissions or other penalties or sanctions as described in 53-6-111 or Title XIX of the Social Security Act,
24 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.

25 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% ~~per~~
26 ~~annum~~ a year, for each day that a facility is substantially out of compliance with standards or participation
27 requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not
28 limited to standards adopted by the department of health and environmental sciences under the authority
29 of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and
30 may be applied to the protection of the health and property of residents of health care facilities that the

1 department finds deficient, including but not limited to payment for the costs of relocation of residents to
 2 other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of
 3 residents for personal funds lost.

4 (3) The department may appoint temporary management personnel to oversee the operation of the
 5 facility and to ~~assure~~ ensure the health and safety of the facility's residents if there is a need for temporary
 6 management because:

- 7 (a) an orderly closure of the facility is necessary; or
 8 (b) improvements are being made to bring the facility into compliance with applicable standards.

9 (4) The department shall, in the case of an emergency, close the facility or transfer residents in the
 10 facility to other facilities, or both."
 11

12 **Section 14.** Section 53-6-108, MCA, is amended to read:

13 **"53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the
 14 application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity
 15 of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more
 16 severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the ~~standards~~
 17 ~~adopted by the department of health and environmental sciences or those federal standards established in~~
 18 ~~53-6-106~~ applicable standards imposed by state or federal laws, regulations, rules, or policies may not
 19 exceed ~~\$1,000~~ \$10,000 for each day that the deficiency remains uncorrected. A health care facility
 20 aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."
 21

22 **Section 15.** Section 53-6-111, MCA, is amended to read:

23 **"53-6-111. Department charged with ~~general administration~~ and supervision of medical assistance**
 24 **program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules to**
 25 **punish fraud.** (1) The department of social and rehabilitation services ~~is hereby authorized and empowered~~
 26 ~~to~~ may administer and supervise a vendor payment program of medical assistance under the powers, duties,
 27 and functions provided in ~~chapter~~ Title 53, chapter 2, of this title, as amended, and this chapter and ~~as~~
 28 ~~contemplated by the provisions of~~ that is in compliance with Title XIX of the ~~federal~~ Social Security Act.

29 (2) (a) The department is entitled to collect from a provider, and a provider is liable to the
 30 department for:

1 (i) the amount of a payment under this part to which the provider was not entitled, regardless of
 2 whether the incorrect payment was the result of department or provider error or other cause; and

3 (ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the
 4 department for the rate period.

5 (b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department
 6 is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30
 7 days after the date of mailing of notice of the overpayment by the department to the provider, except that
 8 interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

9 (c) The department may collect any amount described in subsection (2)(a) by:

10 (i) withholding current payments to offset the amount due;

11 (ii) applying methods and using a schedule mutually agreeable to the department and the provider;

12 or

13 (iii) any other legal means.

14 (d) The department may suspend payments to a provider for disputed items pending resolution of
 15 a dispute.

16 (e) The fact that a provider may have ceased providing services or items under the medical
 17 assistance program, may no longer be in business, or may no longer operate a facility, practice, or business
 18 does not excuse repayment under this subsection (2).

19 ~~(2)(3)~~ The department shall adopt rules establishing a system of penalties and sanctions applicable
 20 to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper
 21 activities fraud and abuse. The Subject to the definitions in [section 1], the department shall define by rule
 22 these activities which are fraudulent, abusive, or improper rules must include but are not limited to
 23 specifications regarding the activities and conduct that constitute fraud and abuse.

24 ~~(3)(4)~~ Subject to subsections (5) and (6), the sanctions imposed under rules
 25 adopted by the department under subsection (3) may include but are not limited to:

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

27 ~~(b) withholding of payments to offset previous improper payments to a provider;~~

28 ~~(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent,~~
 29 ~~abusive, or improper activities;~~

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

1 ~~(c)~~ permanent termination of participation in the medical assistance program; and

2 (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties
3 applicable to a specific activity, act, or omission involving intentional or knowing violation of specified
4 standards.

5 ~~(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent,~~
6 ~~abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from~~
7 ~~the date of such payment.~~

8 (5) In all cases in which the department may recover medicaid payments or impose a penalty or
9 sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part
10 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to
11 recovery of overpayment or imposition of sanctions.

12 (6) The remedies provided by this section are separate and cumulative to any other administrative,
13 civil, or criminal remedies available under state or federal law, regulation, rule, or policy."

14

15 **Section 16.** Section 61-5-405, MCA, is amended to read:

16 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing**
17 **jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1),
18 subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the
19 definition of felony as provided in 45-2-101(21), and 61-7-103, respectively.

20 (2) In addition to convictions mentioned ~~above~~ in subsection (1), the department, for the purpose
21 of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect
22 to the conduct reported as it would if ~~such~~ the conduct had occurred in this state for:

23 (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation
24 of a motor vehicle (61-5-303); and

25 (b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

26 (3) Court abstracts or reports of conviction received by the department that name an individual
27 licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not
28 take action against the driver's license or driving privilege of the individual as may be required elsewhere
29 in this title."

30

1 **NEW SECTION.** **Section 17. Codification instruction.** (1) [Sections 1 through 6] are intended to
2 be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part
3 1, apply to [sections 1 through 6].

4 (2) [Section 7] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the
5 provisions of Title 45, chapter 6, part 3, apply to [section 7].

6

7 **NEW SECTION.** **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
9 applications, the part remains in effect in all valid applications that are severable from the invalid
10 applications.

11

12 **NEW SECTION.** **Section 19. Effective dates.** (1) [Sections 1 and 6 through 18 and this section]
13 are effective on passage and approval.

14 (2) [Sections 2 through 5] are effective July 1, 1995.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0293, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising the laws related to Medicaid fraud and establishing a Medicaid Fraud Control Unit at the Department of Justice (DOJ).

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate the fiscal impact of this proposed legislation.
2. The Executive Budget contains a new proposal within the Department of Social and Rehabilitation Services (SRS) to fund the Medicaid Fraud Control Unit.
3. Funds will need to be transferred from SRS to DOJ. Federal regulations stipulate that the state Medicaid agent (SRS) cannot perform the Medicaid Fraud investigations. (Please see Technical Note below.)
4. DOJ will require 7.00 FTE and associated operating expenses for operating the fraud control unit. Operating costs include start up costs for vehicles, law enforcement equipment, computers/software, and office equipment (FY96 only - \$132,955). Additionally, ongoing operating costs are projected at \$87,017 in FY96 and \$87,064 in FY97. FTE costs are:

	<u>FY96</u>	<u>FY97</u>
3 crim. investigators/agents - grade 16 (36,769 in FY96 and 36,900 in FY97)	110,307	110,700
1 crim. prosecutor - grade 19	47,379	47,551
1 auditor - grade 14	31,364	31,475
1 investigative assistant - grade 14	31,364	31,475
1 administrative support - grade 10	<u>23,275</u>	<u>23,353</u>
TOTALS	243,689	244,554

5. Funding for the Fraud Control Unit is 75% federal funds and 25% general fund.
6. Cost recoveries and cost avoidance will begin to occur in SRS during the second year of the program operation. Based upon a similar program for Workers' Comp, these cost savings are expected to be \$3.00 for each dollar invested in the fraud control program. Based on annual expenditures of \$400,000, savings are estimated to be \$1.2 million in Medicaid benefits in FY97. Funding for the Medicaid benefits during FY97 is 69.00% federal funds and 31.00% general fund.
7. Upon approval of this proposed legislation, an appropriation for the DOJ will be included in HB2 for this unit. The SRS budget, which currently contains a new proposal which transfers funds of \$400,000 per year (25% general fund and 75% federal funds) for funding this unit, will likewise be adjusted.
8. General fund savings in the 1997 biennium will be about \$90,277.

(continued)

Dave Lewis 2-9-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Ethel Harding 2-9-95
 ETHEL HARDING, PRIMARY SPONSOR DATE

(continued)

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Department of Justice</u>		
<u>Expenditures:</u>		
FTE	7.00	7.00
Personal Services	243,689	244,554
Operating expenses	87,017	87,064
Equipment	<u>132,955</u>	<u>0</u>
Total	463,661	331,618
<u>Funding:</u>		
General fund from Justice (01)	15,915	0
General fund from SRS (01)	100,000	82,904
Federal Funds (03)	<u>347,746</u>	<u>248,714</u>
Total	463,661	331,618
<u>Department of SRS</u>		
<u>Expenditures:</u>		
Transfers to DOJ	400,000	331,618
Medicaid Benefit Savings	<u>0</u>	<u>(1,200,000)</u>
Total	400,000	(868,382)
<u>Funding:</u>		
General Fund (01)	100,000	(289,096)
Federal Funds (03)	<u>300,000</u>	<u>(579,286)</u>
Total	400,000	(868,382)
<u>Net Impact:</u>		
General Fund (01)	115,915	(206,192)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional savings will accrue in future biennia from cost aversion and recovery of Medicaid funds.

1 SENATE BILL NO. 293

2 INTRODUCED BY HARDING, COBB, BURNETT, SWYSGOOD, FISHER, HARP, GRINDE, FRANKLIN,
3 SWANSON, HARPER, HALLIGAN

4 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID
7 FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR
8 MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH
9 APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT
10 IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING
11 CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID
12 APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND
13 ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING
14 THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN
15 MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH
16 APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104,
17 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE
18 DATES."
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21

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

24 (1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard
25 of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical
26 assistance program when the disregard or failure results or may result in an incorrect determination that
27 a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments
28 to which the provider is not entitled.

29 (2) "Applicant" means a person:

30 (a) who has submitted an application for determination of medicaid eligibility to a medicaid agency

1 on the person's own behalf or on behalf of another person; or

2 (b) on whose behalf an application has been submitted.

3 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under
4 the medicaid program.

5 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form,
6 that is used to claim specific services or items as payable or reimbursable under the medicaid program or
7 that states income, expense, or other information that is or may be used to determine entitlement to or the
8 rate of payment under the medicaid program. The term includes any documents submitted as part of or
9 in support of the claim.

10 (5) "Department" means the department of social and rehabilitation services provided for in
11 2-15-2201.

12 (6) "Document" means any application, claim, form, report, record, writing, or correspondence,
13 whether in written, electronic, magnetic, or other form.

14 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving
15 purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid
16 payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not
17 limited to any conduct or omission under the medicaid program that would constitute a criminal offense
18 under Title 45, chapter 6 or 7.

19 (8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter
20 6.

21 (9) "Medicaid agency" means any agency or entity of state, county, or local government that
22 administers any part of the medicaid program, whether under direct statutory authority or under contract
23 with an authorized agency of the state or federal government. The term includes but is not limited to the
24 department, the department of health and environmental sciences, the department of corrections and
25 human services, county offices of human services and public welfare, and other local and state agencies
26 and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims
27 processing or payment, utilization review, case management, provider certification, investigation, or other
28 administration of the medicaid program.

29 (10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or
30 wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by

1 the patient or the patient's designated representative. Misappropriation of patient property includes but
2 is not limited to any conduct with respect to a patient's property that would constitute a criminal offense
3 under Title 45, chapter 6, part 3:

4 (11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or
5 unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or
6 mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a
7 patient that would constitute a criminal offense under Title 45, chapter 5.

8 (12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission,
9 to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental
10 illness when an omission is not caused by factors beyond the person's control or by good faith errors in
11 judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would
12 constitute a criminal offense under 45-5-208.

13 (13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other
14 entity or business association that has enrolled or applied to enroll as a provider of services or items under
15 the medical assistance program established under this part.

16 (14) "Recipient" means a person:

17 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether
18 or not the person actually has received any benefits; or

19 (b) who actually receives medicaid benefits, whether or not determined eligible.

20 (15) (a) "Records" means medical, professional, business, or financial information and documents,
21 whether in written, electronic, magnetic, microfilm, or other form:

22 (i) pertaining to the provision of treatment, care, services, or items to a recipient;

23 (ii) pertaining to the income and expenses of the provider; or

24 (iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment
25 or reimbursement under the medicaid program.

26 (b) The term includes all records and documents, regardless of whether the records are required by
27 medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

28

29 **NEW SECTION. Section 2. Medicaid fraud control unit.** (1) There is a medicaid fraud control unit
30 in the department of justice. The unit is under the supervision and control of the attorney general and,

1 subject to the availability of appropriated funds, consists of the agents and employees of the department
2 of justice whom the attorney general considers necessary and appropriate, including but not limited to:

3 (a) persons qualified by education, training, experience, and high professional competence in
4 criminal and civil investigative procedures;

5 (b) at least one person licensed to practice law in Montana and qualified by education, training,
6 experience, and high professional competence to prosecute crimes; and

7 (c) auditors and other additional professional and support staff.

8 (2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103.
9 Agents designated by the attorney general have peace officer status and authority, including but not limited
10 to search, seizure, and arrest.

11

12 **NEW SECTION. Section 3. Powers and duties of medicaid fraud control unit.** (1) The medicaid
13 fraud control unit shall:

14 (a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants,
15 recipients, providers, or other persons under the medical assistance program established under this chapter,
16 including but not limited to cases referred by the department;

17 (b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property
18 by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal
19 proceedings or refer the complaint to another state agency for action;

20 (c) refer to the department for collection and, when appropriate, consideration and imposition of
21 appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments,
22 fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying
23 out its activities;

24 (d) communicate and cooperate with and, subject to applicable confidentiality laws, provide
25 information to other state and federal agencies involved in the investigation and prosecution of health care
26 fraud, abuse, and other improper activities related to the medicaid program;

27 (e) transmit to other state and federal agencies, in accordance with law reports of convictions,
28 copies of judgments and sentences imposed and other information and documents for purposes of program
29 exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or
30 assistance programs; and

1 (f) recommend to state agencies appropriate or necessary adoption or revision of statutes,
2 regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the
3 medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper
4 activities under the medicaid program.

5 (2) The medicaid fraud control unit may:

6 (a) initiate criminal prosecutions related to the medicaid program in any court of competent
7 jurisdiction in the state of Montana;

8 (b) upon written request, obtain information and records from applicants, recipients, and providers;

9 (c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas
10 under Title 46, chapter 4, part 3;

11 (d) subject to applicable federal confidentiality laws and regulations and for purposes related to any
12 investigation or prosecution related to the medicaid program, obtain from the department, county welfare
13 and human services offices, and other local, county, or state government departments or agencies records
14 and other information, including but not limited to applicant and recipient applications, provider enrollment
15 forms, claims and reports, individual or entity tax returns, or other information provided to or in the
16 possession of the department of revenue or the state auditor;

17 (e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or
18 imposition of penalties, restrictions, or sanctions;

19 (f) enter into agreements with the department and other state and federal agencies in furtherance
20 of the unit's mission; and

21 (g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and
22 any implementing federal regulations and policies that require the state to operate a medicaid fraud control
23 unit.

24
25 **NEW SECTION. Section 4. Cooperation of governmental agencies with medicaid fraud control unit.**

26 All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit
27 and its agents and employees to effectuate the purposes of the unit.

28
29 **NEW SECTION. Section 5. Permitted disclosure of information obtained in medicaid fraud control**
30 **unit investigations.** Records, documents, and other information obtained in the course of an investigation

1 by the medicaid fraud control unit or its agents, employees, or attorneys may be disclosed:

2 (1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title
3 44, chapter 5; and

4 (2) to a medicaid agency for purposes related to administration of the medicaid program.
5

6 **NEW SECTION. Section 6. Truthfulness, completeness, and accuracy of submissions to medicaid**
7 **agencies.** (1) A person who submits to a medicaid agency an application, claim, report, document, or other
8 information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as
9 a provider, or the right to or the amount of payment under the medicaid program is considered to represent
10 to the department, to the best of the person's knowledge and belief, that the item is genuine and that its
11 contents, including all statements, claims, and representations contained in the document, are true,
12 complete, accurate, and not misleading.

13 (2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness,
14 and accuracy of all applications, claims, reports, documents, and other information and of all statements
15 and representations made or submitted, or authorized by the provider to be made or submitted, to the
16 department for purposes related to the medicaid program. The duty applies whether the applications,
17 claims, reports, documents, other information, statements, or representations were made or submitted, or
18 authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant
19 or recipient being served by the provider.

20 (b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to
21 the department or its agents or employees for payment or reimbursement under the medicaid program is
22 one for which the provider is entitled to receive payment and that the service or item is provided and billed
23 according to all applicable medicaid requirements, including but not limited to identification of the
24 appropriate procedure code or level of service and provision of the service by a person, facility, or other
25 provider entitled to receive medicaid payment for the particular service.

26 (3) A person is considered to have known that a claim, statement, or representation related to the
27 medicaid program was false, incomplete, inaccurate, or misleading if the person knew, or by virtue of the
28 person's position, authority, or responsibility should have known, of the falsity, incompleteness, inaccuracy,
29 or misleading nature of the claim, statement, or representation.

30 (4) A person is considered to have made or to have authorized to be made a claim, statement, or

1 representation if the person:

2 (a) had the authority or responsibility to:

3 (i) make the claim, statement, or representation;

4 (ii) supervise another who made the claim, statement, or representation; or

5 (iii) authorize the making of the claim, statement, or representation, whether by operation of law,
6 business or professional practice, or office policy or procedure; and

7 (b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result,
8 the false, incomplete, inaccurate, or misleading statement was made.

9 (5) (a) There is an inference that a person who signs or submits a document to a medicaid agency
10 on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the
11 provider's direction.

12 (b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile,
13 computer-generated and typed, or block-letter signatures.

14
15 **NEW SECTION. Section 7. Medicaid fraud.** (1) A person commits the offense of medicaid fraud
16 when:

17 (a) the person obtains a medicaid payment or benefit for the person or another person by purposely
18 or knowingly:

19 (i) making, submitting, or authorizing the making or submitting of a false, incomplete, inaccurate,
20 or misleading medicaid claim, statement, representation, application, or document to a medicaid agency;

21 or

22 (ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement,
23 representation, application, or document under the medicaid program for a service or item when the person
24 knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules,
25 or policies to medicaid payment or benefit for the service or item or for the amount of payment requested
26 or claimed;

27 (b) the person purposely or knowingly:

28 (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback,
29 bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing
30 services or items for which payment may be made under the medicaid program or in return for purchasing,

1 leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or
2 items from a provider for which payment may be made under the medicaid program; or

3 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient
4 to another provider for the furnishing of services or items for which payment may be made under the
5 medicaid program; or

6 (c) the person, with respect to a managed care contract, health maintenance organization contract,
7 or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to
8 provide covered medically necessary services to eligible recipients as required by the contract.

9 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or
10 federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is
11 NOT considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same
12 protections allowed under federal laws and regulations.

13 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance
14 upon the written authorization of the department.

15 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
16 not exceeding \$500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
17 jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined
18 \$500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A
19 person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county
20 jail for a term not less than 30 days or more than 1 year.

21 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
22 exceeding \$500 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the
23 value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or
24 both.

25 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of
26 payments or benefits involved is the greater of the value of medicaid payments or benefits received as a
27 result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

28 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
29 transaction may be aggregated in determining the value involved.

30 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in

1 the medicaid program:

2 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
3 terminated from participation in the medical assistance program;

4 (ii) for any period of time not less than 3 years for a second offense, or the person may be
5 permanently terminated from participation in the medical assistance program; or

6 (iii) permanently for a third offense.

7 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not
8 entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the
9 services or items involved and shall repay to the medicaid program any payments or benefits obtained by
10 any person for the services or items involved.

11 (6) The establishment of the criminal offenses specified in this section does not preclude the
12 application of any other provision of law.

13

14 **Section 8.** Section 45-2-101, MCA, is amended to read:

15 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken
16 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
17 the following definitions apply in this title:

18 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
19 communication, and when relevant, a failure or omission to take action.

20 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
21 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
22 in its application to an individual.

23 (3) "Another" means a person or persons, as defined in this code, other than the offender.

24 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
25 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
26 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
27 of public measures that a candidate engages to support or oppose.

28 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
29 includes mental illness or impairment.

30 (6) "Cohabit" means to live together under the representation of being married.

1 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish
2 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
3 same offense or that affects the same person or the same persons or the property of the same person or
4 persons.

5 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions
6 by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,
7 software, or communication facilities that are connected or related to that device in a system or network.

8 (9) "Computer network" means the interconnection of communication systems between computers
9 or computers and remote terminals.

10 (10) "Computer program" means an instruction or statement or a series of instructions or
11 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of
12 a computer or computer system and causes it to perform specified functions.

13 (11) "Computer services" include but are not limited to computer time, data processing, and
14 storage functions.

15 (12) "Computer software" means a set of computer programs, procedures, and associated
16 documentation concerned with the operation of a computer system.

17 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
18 software, or other related computer equipment.

19 (14) "Conduct" means an act or series of acts and the accompanying mental state.

20 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
21 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
22 competent jurisdiction authorized to try the case without a jury.

23 (16) "Correctional institution" means the state prison, county or city jail, or other institution for the
24 incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

25 (17) "Deception" means knowingly to:

26 (a) create or confirm in another an impression that is false and that the offender does not believe
27 to be true;

28 (b) fail to correct a false impression that the offender previously has created or confirmed;

29 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

30 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other

1 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is
2 not a matter of official record; or

3 (e) promise performance that the offender does not intend to perform or knows will not be
4 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

5 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
6 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
7 or occupation.

8 (19) "Deprive" means to withhold property of another:

9 (a) permanently;

10 (b) for such a period as to appropriate a portion of its value;

11 (c) with the purpose to restore it only upon payment of reward or other compensation; or

12 (d) to dispose of the property and use or deal with the property so as to make it unlikely that the
13 owner will recover it.

14 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
15 of the same sex or any form of sexual intercourse with an animal.

16 (21) "Document" means, with respect to offenses involving the medicaid program, any application,
17 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm,
18 or other form.

19 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
20 imprisonment in the state prison for any term exceeding 1 year.

21 ~~(22)~~(23) "Forcible felony" means any felony that involves the use or threat of physical force or
22 violence against any individual.

23 ~~(23)~~(24) A "frisk" is a search by an external patting of a person's clothing.

24 ~~(24)~~(25) "Government" includes any branch, subdivision, or agency of the government of the state
25 or any locality within it.

26 ~~(25)~~(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person
27 affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected
28 person is interested.

29 ~~(26)~~(27) A "house of prostitution" means any place where prostitution or promotion of prostitution
30 is regularly carried on by one or more persons under the control, management, or supervision of another.

1 ~~(27)~~(28) "Human being" means a person who has been born and is alive.

2 ~~(28)~~(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from
3 being in the possession of a person subject to official detention.

4 ~~(29)~~(30) "Inmate" means a person who engages in prostitution in or through the agency of a house
5 of prostitution.

6 ~~(30)~~(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter
7 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more
8 of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
9 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
10 of alcohol by volume.

11 ~~(31)~~(32) An "involuntary act" means any act that is:

12 (a) a reflex or convulsion;

13 (b) a bodily movement during unconsciousness or sleep;

14 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

15 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
16 either conscious or habitual.

17 ~~(32)~~(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled
18 by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
19 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
20 to attend as a prospective juror.

21 ~~(33)~~(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance
22 described by a statute defining an offense when the person is aware of the person's own conduct or that
23 the circumstance exists. A person acts knowingly with respect to the result of conduct described by a
24 statute defining an offense when the person is aware that it is highly probable that the result will be caused
25 by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
26 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such
27 as "knowing" or "with knowledge", have the same meaning.

28 ~~(34)~~(35) "Medicaid" means the Montana medical assistance program provided for in Title 53,
29 chapter 6.

30 ~~(35)~~(36) "Medicaid agency" has the meaning in {section 1}.

1 (37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a
 2 recipient under the medicaid program.

3 (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,
 4 or other form:

5 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
 6 program; or

7 (ii) that states income, expense, or other information that is or may be used to determine
 8 entitlement to or the rate of payment under the medicaid program.

9 (b) The term includes any related documents submitted as a part of or in support of the claim.

10 (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders
 11 the person incapable of appreciating the nature of the person's own conduct.

12 ~~(35)~~(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of
 13 appreciating or controlling the person's own conduct as a result of the influence of an intoxicating
 14 substance.

15 ~~(36)~~(41) "Misdemeanor" means an offense in which the sentence imposed upon conviction is
 16 imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is
 17 imprisonment in the state prison for any term of 1 year or less.

18 ~~(37)~~(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance
 19 described by a statute defining an offense when the person consciously disregards a risk that the result will
 20 occur or that the circumstance exists or when the person disregards a risk of which the person should be
 21 aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree
 22 that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would
 23 observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack
 24 of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

25 ~~(38)~~(43) "Obtain" means:

26 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
 27 offender or to another; and

28 (b) in relation to labor or services, to secure the performance of the labor or service.

29 ~~(39)~~(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away,
 30 or the sale, conveyance, or transfer of title to, interest in, or possession of property.

1 ~~(40)~~(45) "Occupied structure" means any building, vehicle, or other place suitable for human
2 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
3 present. Each unit of a building consisting of two or more units separately secured or occupied is a separate
4 occupied structure.

5 ~~(41)~~(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted,
6 or punished for a public offense.

7 ~~(42)~~(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
8 authorized. Offenses are classified as felonies or misdemeanors.

9 ~~(43)~~(48) "Official detention" means imprisonment resulting from a conviction for an offense,
10 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer
11 pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the
12 protection of the welfare of the person detained or for the protection of society. Official detention does not
13 include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest
14 unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

15 ~~(44)~~(49) "Official proceeding" means a proceeding heard or that may be heard before any
16 legislative, judicial, administrative, or other governmental agency or official authorized to take evidence
17 under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony
18 or deposition in connection with the proceeding.

19 ~~(45)~~(50) "Other state" means any state or territory of the United States, the District of Columbia,
20 and the Commonwealth of Puerto Rico.

21 ~~(46)~~(51) "Owner" means a person other than the offender who has possession of or any other
22 interest in the property involved, even though the interest or possession is unlawful, and without whose
23 consent the offender has no authority to exert control over the property.

24 ~~(47)~~(52) "Party official" means a person who holds an elective or appointive post in a political party
25 in the United States by virtue of which the person directs or conducts or participates in directing or
26 conducting party affairs at any level of responsibility.

27 ~~(48)~~(53) "Peace officer" means any person who by virtue of the person's office or public
28 employment is vested by law with a duty to maintain public order or to make arrests for offenses while
29 acting within the scope of the person's authority.

30 ~~(49)~~(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or

1 anything else the primary significance of which is economic gain.

2 ~~(50)~~(55) "Person" includes an individual, business association, partnership, corporation,
3 government, or other legal entity and an individual acting or purporting to act for or on behalf of any
4 government or subdivision of government.

5 ~~(51)~~(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
6 to communicate unwillingness to act.

7 ~~(52)~~(57) "Possession" is the knowing control of anything for a sufficient time to be able to
8 terminate control.

9 ~~(53)~~(58) "Premises" includes any type of structure or building and any real property.

10 ~~(54)~~(59) "Property" means any tangible or intangible thing of value. Property includes but is not
11 limited to:

12 (a) real estate;

13 (b) money;

14 (c) commercial instruments;

15 (d) admission or transportation tickets;

16 (e) written instruments that represent or embody rights concerning anything of value, including
17 labor or services, or that are otherwise of value to the owner;

18 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
19 building;

20 (g) electricity, gas, and water;

21 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

22 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
23 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
24 thereof;

25 (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions,
26 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret
27 scientific, technical, merchandising, production, or management information or a secret designed process,
28 procedure, formula, invention, or improvement; and

29 (k) electronic impulses, electronically processed or produced data or information, commercial
30 instruments, computer software or computer programs, in either machine- or human-readable form,

1 computer services, any other tangible or intangible item of value relating to a computer, computer system,
2 or computer network, and any copies thereof.

3 ~~(55)~~(60) "Property of another" means real or personal property in which a person other than the
4 offender has an interest that the offender has no authority to defeat or impair, even though the offender
5 may have an interest in the property.

6 ~~(56)~~(61) "Public place" means any place to which the public or any substantial group has access.

7 ~~(57)~~(62) "Public servant" means any officer or employee of government, including but not limited
8 to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
9 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
10 term "public servant" includes one who has been elected or designated to become a public servant.

11 ~~(59)~~(63) "Purposely"--a person acts purposely with respect to a result or to conduct described by
12 a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause
13 that result. When a particular purpose is an element of an offense, the element is established although the
14 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
15 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

16 ~~(59)~~(64) (a) "Serious bodily injury" means bodily injury that:

17 (i) creates a substantial risk of death;

18 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
19 process of any bodily member or organ; or

20 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
21 or protracted loss or impairment of the function or process of any bodily member or organ.

22 (b) The term includes serious mental illness or impairment.

23 ~~(60)~~(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person
24 of another for the purpose of arousing or gratifying the sexual desire of either party.

25 ~~(61)~~(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by
26 the penis of another person, penetration of the vulva or anus of one person by any body member of another
27 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
28 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
29 penetration, however slight, is sufficient.

30 ~~(62)~~(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise

1 another to commit an offense.

2 ~~(63)~~(68) "State" or "this state" means the state of Montana, all the land and water in respect to
3 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land
4 and water.

5 ~~(64)~~(69) "Statute" means any act of the legislature of this state.

6 ~~(65)~~(70) "Stolen property" means property over which control has been obtained by theft.

7 ~~(66)~~(71) A "stop" is the temporary detention of a person that results when a peace officer orders
8 the person to remain in the peace officer's presence.

9 ~~(67)~~(72) "Tamper" means to interfere with something improperly, meddle with it, make
10 unwarranted alterations in its existing condition, or deposit refuse upon it.

11 ~~(68)~~(73) "Threat" means a menace, however communicated, to:

12 (a) inflict physical harm on the person threatened or any other person or on property;

13 (b) subject any person to physical confinement or restraint;

14 (c) commit any criminal offense;

15 (d) accuse any person of a criminal offense;

16 (e) expose any person to hatred, contempt, or ridicule;

17 (f) harm the credit or business repute of any person;

18 (g) reveal any information sought to be concealed by the person threatened;

19 (h) take action as an official against anyone or anything, withhold official action, or cause the
20 action or withholding;

21 (i) bring about or continue a strike, boycott, or other similar collective action if the person making
22 the threat demands or receives property that is not for the benefit of groups that the person purports to
23 represent; or

24 (j) testify or provide information or withhold testimony or information with respect to another's
25 legal claim or defense.

26 ~~(69)~~(74) (a) "Value" means the market value of the property at the time and place of the crime or,
27 if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within
28 a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the
29 value must be determined as follows:

30 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or

1 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of
2 the indebtedness less any portion of the indebtedness that has been satisfied.

3 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
4 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
5 the instrument might reasonably suffer by virtue of the loss of the instrument.

6 (iii) The value of electronic impulses, electronically produced data or information, computer
7 software or programs, or any other tangible or intangible item relating to a computer, computer system,
8 or computer network is considered to be the amount of economic loss that the owner of the item might
9 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
10 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
11 of the item.

12 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
13 standards set forth in subsection ~~(69)(a)~~ (74)(a), its value is considered to be an amount less than \$500.

14 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
15 whether from the same person or several persons, may be aggregated in determining the value of the
16 property.

17 ~~(70)(75)~~ "Vehicle" means any device for transportation by land, water, or air or by mobile
18 equipment, with provision for transport of an operator.

19 ~~(71)(76)~~ "Weapon" means any instrument, article, or substance that, regardless of its primary
20 function, is readily capable of being used to produce death or serious bodily injury.

21 ~~(72)(77)~~ "Witness" means a person whose testimony is desired in any official proceeding, in any
22 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."
23

24 **Section 9.** Section 45-2-103, MCA, is amended to read:

25 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate
26 homicide as defined in 45-5-102(1)(b) or an offense ~~which that~~ involves absolute liability, a person is not
27 guilty of an offense unless, with respect to each element described by the statute defining the offense, ~~he~~
28 a person acts while having one of the mental states ~~described~~ of knowingly, negligently, or purposely ~~in~~
29 ~~subsections (33), (37), and (59) of 45-2-101.~~

30 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental

1 state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

2 (3) The existence of a mental state may be inferred from the acts of the accused and the facts and
3 circumstances connected with the offense.

4 (4) If the statute defining an offense prescribes a particular mental state with respect to the offense
5 as a whole without distinguishing among the elements ~~thereof~~ of the offense, the prescribed mental state
6 applies to each ~~such~~ element.

7 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning,
8 or application of the statute defining an offense is not an element of the offense unless the statute clearly
9 defines it as ~~such~~ an element.

10 (6) A person's reasonable belief that ~~his~~ the person's conduct does not constitute an offense is
11 a defense if:

12 (a) the offense is defined by an administrative regulation or order ~~which~~ that is not known to ~~him~~
13 the person and has not been published or otherwise made reasonably available to ~~him~~ the person and ~~he~~
14 if the person could not have acquired ~~such~~ the knowledge by the exercise of due diligence pursuant to facts
15 known to ~~him~~ the person;

16 (b) ~~he~~ the person acts in reliance upon a statute ~~which~~ that later is determined to be invalid;

17 (c) ~~he~~ the person acts in reliance upon an order or opinion of the Montana supreme court or a
18 United States appellate court later overruled or reversed; or

19 (d) ~~he~~ the person acts in reliance upon an official interpretation of the statute, regulation, or order
20 defining the offense made by a public officer or agency legally authorized to interpret ~~such~~ the statute.

21 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless ~~he~~ the person
22 may be convicted of an included offense of which ~~he~~ the person would be guilty if the law were as ~~he~~ the
23 person believed it to be.

24 (8) ~~Any~~ A defense based upon this section is an affirmative defense."
25

26 **Section 10.** Section 45-2-104, MCA, is amended to read:

27 "**45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each
28 element ~~thereof~~ of the offense, one of the mental states ~~described in subsections (33), (37), and (58)~~ of
29 knowingly, negligently, or purposely ~~45-2-104~~ only if the offense is punishable by a fine not exceeding
30 \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability.

1 for the conduct described."

2

3 **Section 11.** Section 50-20-109, MCA, is amended to read:

4 **"50-20-109. Control of practice of abortion.** (1) ~~No~~ An abortion may not be performed within the
5 state of Montana:

6 (a) except by a licensed physician;

7 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

8 (c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to
9 preserve the life or health of the mother.

10 (2) An abortion under subsection (1)(c) may only be performed if:

11 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
12 writing by ~~him~~ the physician, setting forth in detail the facts upon which ~~he~~ the physician relies in making
13 ~~such~~ the judgment; and

14 (b) two other licensed physicians have first examined the patient and concurred in writing with
15 ~~such~~ the judgment. The foregoing certification and concurrence ~~is~~ are not required if a licensed physician
16 certifies that the abortion is necessary to preserve the life of the mother.

17 (3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section
18 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
19 "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if
20 necessary to preserve the life or health of the mother.

21 (4) ~~No~~ A physician, facility, or other person or agency ~~shall~~ may not engage in solicitation,
22 advertising, or other form of communication ~~having~~ that has the purpose of inviting, inducing, or attracting
23 ~~any~~ a person to come to ~~such~~ the physician, facility, or other person or agency to have an abortion or to
24 purchase abortifacients.

25 (5) Violation of subsections (1), (2), and (3) ~~of this section~~ is a felony. Violation of subsection (4)
26 ~~of this section~~ is a misdemeanor."

27

28 **Section 12.** Section 53-6-106, MCA, is amended to read:

29 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
30 53-6-108, the following definitions apply:

1 (a) "Department" means the department of social and rehabilitation services.

2 (b) "Health care facility" means a health care facility as defined in 50-5-101.

3 (2) The department and the department of health and environmental sciences may enter into
4 agreements with appropriate federal agencies for the purpose of certifying health care facilities for the
5 Montana medicaid program.

6 (3) The department of health and environmental sciences ~~shall~~ may adopt rules ~~prescribing as~~
7 necessary to prescribe minimum standards for the maintenance and operation of health care facilities,
8 ~~including standards.~~ Standards for the quality of care provided by those facilities receiving reimbursement
9 under the Montana medicaid program. ~~These standards must include, as a minimum,~~ be consistent with
10 those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, (42
11 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in Title 42 CFR
12 430, et seq. of the Code of Federal Regulations, as may be amended. The authority to prescribe standards
13 and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department
14 of health and environmental sciences pursuant to Title 50, chapter 5.

15 (4) Standards adopted by the department of health and environmental sciences may include but
16 are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and
17 nutrition, environmental and sanitation, administration, admission policies, patient care planning, training,
18 medication, health services, rehabilitation services, and social services and activities."
19

20 **Section 13.** Section 53-6-107, MCA, is amended to read:

21 **"53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew
22 an agreement with a health care facility that has failed to meet the requirements for certification ~~adopted~~
23 for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable
24 law. The department may also impose sanctions in the form of denial of medicaid payments for new
25 admissions or other penalties or sanctions as described in 53-6-111 or Title XIX of the Social Security Act,
26 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.

27 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% ~~per~~
28 ~~annum~~ a year, for each day that a facility is substantially out of compliance with standards or participation
29 requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not
30 limited to standards adopted by the department of health and environmental sciences under the authority

1 of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and
 2 may be applied to the protection of the health and property of residents of health care facilities that the
 3 department finds deficient, including but not limited to payment for the costs of relocation of residents to
 4 other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of
 5 residents for personal funds lost.

6 (3) The department may appoint temporary management personnel to oversee the operation of the
 7 facility and to ~~assure~~ ensure the health and safety of the facility's residents if there is a need for temporary
 8 management because:

9 (a) an orderly closure of the facility is necessary; or

10 (b) improvements are being made to bring the facility into compliance with applicable standards.

11 (4) The department shall, in the case of an emergency, close the facility or transfer residents in the
 12 facility to other facilities, or both."

13
 14 **Section 14.** Section 53-6-108, MCA, is amended to read:

15 **"53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the
 16 application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity
 17 of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more
 18 severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the ~~standards~~
 19 ~~adopted by the department of health and environmental sciences or those federal standards established in~~
 20 ~~53-6-106~~ applicable standards imposed by state or federal laws, regulations, rules, or policies may not
 21 exceed ~~\$1,000~~ \$10,000 for each day that the deficiency remains uncorrected. A health care facility
 22 aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

23
 24 **Section 15.** Section 53-6-111, MCA, is amended to read:

25 **"53-6-111. Department charged with general administration and supervision of medical assistance**
 26 **program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules to**
 27 **punish fraud.** (1) The department of social and rehabilitation services ~~is hereby authorized and empowered~~
 28 ~~to~~ may administer and supervise a vendor payment program of medical assistance under the powers, duties,
 29 and functions provided in ~~chapter~~ Title 53, chapter 2, of this title, as amended, and this chapter and as
 30 ~~contemplated by the provisions of~~ that is in compliance with Title XIX of the ~~federal~~ Social Security Act.

1 (2) (a) The department is entitled to collect from a provider, and a provider is liable to the
 2 department for:

3 (i) the amount of a payment under this part to which the provider was not entitled, regardless of
 4 whether the incorrect payment was the result of department or provider error or other cause; and

5 (ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the
 6 department for the rate period.

7 (b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department
 8 is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30
 9 days after the date of mailing of notice of the overpayment by the department to the provider, except that
 10 interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

11 (c) The department may collect any amount described in subsection (2)(a) by:

12 (i) withholding current payments to offset the amount due;

13 (ii) applying methods and using a schedule mutually agreeable to the department and the provider;

14 or

15 (iii) any other legal means.

16 (d) The department may suspend payments to a provider for disputed items pending resolution of
 17 a dispute.

18 (e) The fact that a provider may have ceased providing services or items under the medical
 19 assistance program, may no longer be in business, or may no longer operate a facility, practice, or business
 20 does not excuse repayment under this subsection (2).

21 ~~(2)(3)~~ The department shall adopt rules establishing a system of penalties and sanctions applicable
 22 to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper
 23 activities fraud and abuse. The Subject to the definitions in [section 1], the department shall define by rule
 24 these activities which are fraudulent, abusive, or improper rules must include but are not limited to
 25 specifications regarding the activities and conduct that constitute fraud and abuse.

26 ~~(3)(4)~~ The penalties or Subject to subsections (5) and (6), the sanctions imposed under rules
 27 adopted by the department under subsection (3) may include but are not limited to:

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

29 (b) ~~withholding of payments to offset previous improper payments to a provider;~~

30 ~~(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent,~~

1 ~~abusive, or improper activities;~~

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

3 ~~(e)(c)~~ permanent termination of participation in the medical assistance program; and

4 (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties
5 applicable to a specific activity, act, or omission involving intentional or knowing violation of specified
6 standards.

7 ~~(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent,~~
8 ~~abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from~~
9 ~~the date of such payment.~~

10 (5) In all cases in which the department may recover medicaid payments or impose a penalty or
11 sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part
12 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to
13 recovery of overpayment or imposition of sanctions.

14 (6) The remedies provided by this section are separate and cumulative to any other administrative,
15 civil, or criminal remedies available under state or federal law, regulation, rule, or policy."

16

17 **Section 16.** Section 61-5-405, MCA, is amended to read:

18 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing**
19 **jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1),
20 subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the
21 definition of felony as provided in 45-2-101(24), and 61-7-103, respectively.

22 (2) In addition to convictions mentioned ~~above~~ in subsection (1), the department, for the purpose
23 of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect
24 to the conduct reported as it would if ~~such~~ the conduct had occurred in this state for:

25 (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation
26 of a motor vehicle (61-5-303); and

27 (b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

28 (3) Court abstracts or reports of conviction received by the department that name an individual
29 licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not
30 take action against the driver's license or driving privilege of the individual as may be required elsewhere

1 in this title."

2
3 **NEW SECTION. Section 17. Codification instruction.** (1) [Sections 1 through 6] are intended to
4 be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part
5 1, apply to [sections 1 through 6].

6 (2) [Section 7] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the
7 provisions of Title 45, chapter 6, part 3, apply to [section 7].

8
9 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13
14 **NEW SECTION. Section 19. Effective dates.** (1) [Sections 1 and 6 through 18 and this section]
15 are effective on passage and approval.

16 (2) [Sections 2 through 5] are effective July 1, 1995.

17 -END-

1 SENATE BILL NO. 293

2 INTRODUCED BY HARDING, COBB, BURNETT, SWYSGOOD, FISHER, HARP, GRINDE, FRANKLIN,

3 SWANSON, HARPER, HALLIGAN

4 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID
7 FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR
8 MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH
9 APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT
10 IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING
11 CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID
12 APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND
13 ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING
14 THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN
15 MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH
16 APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104,
17 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE
18 DATES."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Human Services and Aging** report that **Senate Bill 293** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Duane Grimes, Chair

And, that such amendments read:

Carried by: Rep. Cobb

1. Page 6, line 27.

Page 7, line 8

Strike: ", incomplete, inaccurate, or misleading"

2. Page 6, lines 28 and 29.

Strike: ", incompleteness, inaccuracy, or misleading nature"

3. Page 7, line 8.

Following: "made"

Insert: ", resulting in a claim for a service or item when the person knew or had reason to know that the person was not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

4. Page 7.

Following: line 13

Insert: "(6) The department shall directly or by contract provide a program of instruction and assistance to persons submitting applications, claims, reports, documents, and other information to the department concerning the completion and submission of the application, claim, report, document, or other information in a manner determined necessary by the department. The program must include:

(a) clear directions for the completion of applications, claims, reports, documents, and other

SB 293

Committee Vote:

Yes 15, No 0.

HOUSE

information;

(b) examples of properly completed applications, claims, reports, documents, and other information;

(c) a method by which persons submitting applications, claims, reports, documents, and other information may, on a case-by-case basis, receive accurate, complete, specific, and timely advice and directions from the department before the completed applications, claims, reports, documents, and other information must be submitted to the department; and

(d) a method by which persons submitting applications, claims, reports, documents, and other information may challenge the department's interpretation or application of the manner in which the applications, claims, reports, documents, and other information must be completed.

(7) This section applies only for the purpose of civil liability under Title 53 and does not apply in a criminal proceeding."

5. Page 7, line 19.

Strike: ",incomplete, inaccurate,"

6. Page 7, line 20.

Following: "agency"

Insert: "for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

7. Page 8, line 14.

Following: "authorization"

Insert: "or advice"

8. Page 24, line 13.

Strike: "or imposition of sanctions"

-END-

1 SENATE BILL NO. 293

2 INTRODUCED BY HARDING, COBB, BURNETT, SWYSGOOD, FISHER, HARP, GRINDE, FRANKLIN,
3 SWANSON, HARPER, HALLIGAN

4 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID
7 FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR
8 MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH
9 APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT
10 IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING
11 CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID
12 APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND
13 ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING
14 THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN
15 MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH
16 APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104,
17 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE
18 DATES."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **NEW SECTION. Section 1. Definitions.** As used in this part, unless expressly provided otherwise,
23 the following definitions apply:

24 (1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard
25 of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical
26 assistance program when the disregard or failure results or may result in an incorrect determination that
27 a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments
28 to which the provider is not entitled.

29 (2) "Applicant" means a person:

30 (a) who has submitted an application for determination of medicaid eligibility to a medicaid agency

1 on the person's own behalf or on behalf of another person; or

2 (b) on whose behalf an application has been submitted.

3 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under
4 the medicaid program.

5 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form,
6 that is used to claim specific services or items as payable or reimbursable under the medicaid program or
7 that states income, expense, or other information that is or may be used to determine entitlement to or the
8 rate of payment under the medicaid program. The term includes any documents submitted as part of or
9 in support of the claim.

10 (5) "Department" means the department of social and rehabilitation services provided for in
11 2-15-2201.

12 (6) "Document" means any application, claim, form, report, record, writing, or correspondence,
13 whether in written, electronic, magnetic, or other form.

14 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving
15 purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid
16 payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not
17 limited to any conduct or omission under the medicaid program that would constitute a criminal offense
18 under Title 45, chapter 6 or 7.

19 (8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter
20 6.

21 (9) "Medicaid agency" means any agency or entity of state, county, or local government that
22 administers any part of the medicaid program, whether under direct statutory authority or under contract
23 with an authorized agency of the state or federal government. The term includes but is not limited to the
24 department, the department of health and environmental sciences, the department of corrections and
25 human services, county offices of human services and public welfare, and other local and state agencies
26 and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims
27 processing or payment, utilization review, case management, provider certification, investigation, or other
28 administration of the medicaid program.

29 (10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or
30 wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by

1 the patient or the patient's designated representative. Misappropriation of patient property includes but
2 is not limited to any conduct with respect to a patient's property that would constitute a criminal offense
3 under Title 45, chapter 6, part 3.

4 (11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or
5 unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or
6 mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a
7 patient that would constitute a criminal offense under Title 45, chapter 5.

8 (12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission,
9 to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental
10 illness when an omission is not caused by factors beyond the person's control or by good faith errors in
11 judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would
12 constitute a criminal offense under 45-5-208.

13 (13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other
14 entity or business association that has enrolled or applied to enroll as a provider of services or items under
15 the medical assistance program established under this part.

16 (14) "Recipient" means a person:

17 (a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether
18 or not the person actually has received any benefits; or

19 (b) who actually receives medicaid benefits, whether or not determined eligible.

20 (15) (a) "Records" means medical, professional, business, or financial information and documents,
21 whether in written, electronic, magnetic, microfilm, or other form:

22 (i) pertaining to the provision of treatment, care, services, or items to a recipient;

23 (ii) pertaining to the income and expenses of the provider; or

24 (iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment
25 or reimbursement under the medicaid program.

26 (b) The term includes all records and documents, regardless of whether the records are required by
27 medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

28

29 **NEW SECTION. Section 2. Medicaid fraud control unit.** (1) There is a medicaid fraud control unit
30 in the department of justice. The unit is under the supervision and control of the attorney general and,

1 subject to the availability of appropriated funds, consists of the agents and employees of the department
2 of justice whom the attorney general considers necessary and appropriate, including but not limited to:

3 (a) persons qualified by education, training, experience, and high professional competence in
4 criminal and civil investigative procedures;

5 (b) at least one person licensed to practice law in Montana and qualified by education, training,
6 experience, and high professional competence to prosecute crimes; and

7 (c) auditors and other additional professional and support staff.

8 (2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103.
9 Agents designated by the attorney general have peace officer status and authority, including but not limited
10 to search, seizure, and arrest.

11
12 **NEW SECTION. Section 3. Powers and duties of medicaid fraud control unit.** (1) The medicaid
13 fraud control unit shall:

14 (a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants,
15 recipients, providers, or other persons under the medical assistance program established under this chapter,
16 including but not limited to cases referred by the department;

17 (b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property
18 by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal
19 proceedings or refer the complaint to another state agency for action;

20 (c) refer to the department for collection and, when appropriate, consideration and imposition of
21 appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments,
22 fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying
23 out its activities;

24 (d) communicate and cooperate with and, subject to applicable confidentiality laws, provide
25 information to other state and federal agencies involved in the investigation and prosecution of health care
26 fraud, abuse, and other improper activities related to the medicaid program;

27 (e) transmit to other state and federal agencies, in accordance with law reports of convictions,
28 copies of judgments and sentences imposed and other information and documents for purposes of program
29 exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or
30 assistance programs; and

1 (f) recommend to state agencies appropriate or necessary adoption or revision of statutes,
2 regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the
3 medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper
4 activities under the medicaid program.

5 (2) The medicaid fraud control unit may:

6 (a) initiate criminal prosecutions related to the medicaid program in any court of competent
7 jurisdiction in the state of Montana;

8 (b) upon written request, obtain information and records from applicants, recipients, and providers;

9 (c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas
10 under Title 46, chapter 4, part 3;

11 (d) subject to applicable federal confidentiality laws and regulations and for purposes related to any
12 investigation or prosecution related to the medicaid program, obtain from the department, county welfare
13 and human services offices, and other local, county, or state government departments or agencies records
14 and other information, including but not limited to applicant and recipient applications, provider enrollment
15 forms, claims and reports, individual or entity tax returns, or other information provided to or in the
16 possession of the department of revenue or the state auditor;

17 (e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or
18 imposition of penalties, restrictions, or sanctions;

19 (f) enter into agreements with the department and other state and federal agencies in furtherance
20 of the unit's mission; and

21 (g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and
22 any implementing federal regulations and policies that require the state to operate a medicaid fraud control
23 unit.

24
25 **NEW SECTION. Section 4. Cooperation of governmental agencies with medicaid fraud control unit.**

26 All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit
27 and its agents and employees to effectuate the purposes of the unit.

28
29 **NEW SECTION. Section 5. Permitted disclosure of information obtained in medicaid fraud control**
30 **unit investigations.** Records, documents, and other information obtained in the course of an investigation

1 by the medicaid fraud control unit or its agents, employees, or attorneys may be disclosed:

2 (1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title
3 44, chapter 5; and

4 (2) to a medicaid agency for purposes related to administration of the medicaid program.
5

6 **NEW SECTION. Section 6. Truthfulness, completeness, and accuracy of submissions to medicaid**
7 **agencies.** (1) A person who submits to a medicaid agency an application, claim, report, document, or other
8 information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as
9 a provider, or the right to or the amount of payment under the medicaid program is considered to represent
10 to the department, to the best of the person's knowledge and belief, that the item is genuine and that its
11 contents, including all statements, claims, and representations contained in the document, are true,
12 complete, accurate, and not misleading.

13 (2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness,
14 and accuracy of all applications, claims, reports, documents, and other information and of all statements
15 and representations made or submitted, or authorized by the provider to be made or submitted, to the
16 department for purposes related to the medicaid program. The duty applies whether the applications,
17 claims, reports, documents, other information, statements, or representations were made or submitted, or
18 authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant
19 or recipient being served by the provider.

20 (b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to
21 the department or its agents or employees for payment or reimbursement under the medicaid program is
22 one for which the provider is entitled to receive payment and that the service or item is provided and billed
23 according to all applicable medicaid requirements, including but not limited to identification of the
24 appropriate procedure code or level of service and provision of the service by a person, facility, or other
25 provider entitled to receive medicaid payment for the particular service.

26 (3) A person is considered to have known that a claim, statement, or representation related to the
27 medicaid program was false, ~~incomplete, inaccurate, or misleading~~ if the person knew, or by virtue of the
28 person's position, authority, or responsibility should have known, of the falsity, ~~incompleteness, inaccuracy,~~
29 ~~or misleading nature~~ of the claim, statement, or representation.

30 (4) A person is considered to have made or to have authorized to be made a claim, statement, or

1 representation if the person:

2 (a) had the authority or responsibility to:

3 (i) make the claim, statement, or representation;

4 (ii) supervise another who made the claim, statement, or representation; or

5 (iii) authorize the making of the claim, statement, or representation, whether by operation of law,
6 business or professional practice, or office policy or procedure; and

7 (b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result,
8 ~~the false, incomplete, inaccurate, or misleading~~ statement was made, RESULTING IN A CLAIM FOR A
9 SERVICE OR ITEM WHEN THE PERSON KNEW OR HAD REASON TO KNOW THAT THE PERSON WAS NOT
10 ENTITLED UNDER APPLICABLE STATUTES, REGULATIONS, RULES, OR POLICIES TO MEDICAID PAYMENT
11 OR BENEFITS FOR THE SERVICE OR ITEM OR FOR THE AMOUNT OF PAYMENT REQUESTED OR
12 CLAIMED.

13 (5) (a) There is an inference that a person who signs or submits a document to a medicaid agency
14 on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the
15 provider's direction.

16 (b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile,
17 computer-generated and typed, or block-letter signatures.

18 (6) THE DEPARTMENT SHALL DIRECTLY OR BY CONTRACT PROVIDE A PROGRAM OF
19 INSTRUCTION AND ASSISTANCE TO PERSONS SUBMITTING APPLICATIONS, CLAIMS, REPORTS,
20 DOCUMENTS, AND OTHER INFORMATION TO THE DEPARTMENT CONCERNING THE COMPLETION AND
21 SUBMISSION OF THE APPLICATION, CLAIM, REPORT, DOCUMENT, OR OTHER INFORMATION IN A
22 MANNER DETERMINED NECESSARY BY THE DEPARTMENT. THE PROGRAM MUST INCLUDE:

23 (A) CLEAR DIRECTIONS FOR THE COMPLETION OF APPLICATIONS, CLAIMS, REPORTS,
24 DOCUMENTS, AND OTHER INFORMATION;

25 (B) EXAMPLES OF PROPERLY COMPLETED APPLICATIONS, CLAIMS, REPORTS, DOCUMENTS,
26 AND OTHER INFORMATION;

27 (C) A METHOD BY WHICH PERSONS SUBMITTING APPLICATIONS, CLAIMS, REPORTS,
28 DOCUMENTS, AND OTHER INFORMATION MAY, ON A CASE-BY-CASE BASIS, RECEIVE ACCURATE,
29 COMPLETE, SPECIFIC, AND TIMELY ADVICE AND DIRECTIONS FROM THE DEPARTMENT BEFORE THE
30 COMPLETED APPLICATIONS, CLAIMS, REPORTS, DOCUMENTS, AND OTHER INFORMATION MUST BE

1 SUBMITTED TO THE DEPARTMENT; AND

2 (D) A METHOD BY WHICH PERSONS SUBMITTING APPLICATIONS, CLAIMS, REPORTS,
 3 DOCUMENTS, AND OTHER INFORMATION MAY CHALLENGE THE DEPARTMENT'S INTERPRETATION OR
 4 APPLICATION OF THE MANNER IN WHICH THE APPLICATIONS, CLAIMS, REPORTS, DOCUMENTS, AND
 5 OTHER INFORMATION MUST BE COMPLETED.

6 (7) THIS SECTION APPLIES ONLY FOR THE PURPOSE OF CIVIL LIABILITY UNDER TITLE 53 AND
 7 DOES NOT APPLY IN A CRIMINAL PROCEEDING.

8

9 NEW SECTION. Section 7. Medicaid fraud. (1) A person commits the offense of medicaid fraud
 10 when:

11 (a) the person obtains a medicaid payment or benefit for the person or another person by purposely
 12 or knowingly:

13 (i) making, submitting, or authorizing the making or submitting of a false, ~~incomplete, inaccurate,~~
 14 or misleading medicaid claim, statement, representation, application, or document to a medicaid agency
 15 FOR A SERVICE OR ITEM WHEN THE PERSON KNOWS OR HAS REASON TO KNOW THAT THE PERSON
 16 IS NOT ENTITLED UNDER APPLICABLE STATUTES, REGULATIONS, RULES, OR POLICIES TO MEDICAID
 17 PAYMENT OR BENEFITS FOR THE SERVICE OR ITEM OR FOR THE AMOUNT OF PAYMENT REQUESTED
 18 OR CLAIMED; or

19 (ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement,
 20 representation, application, or document under the medicaid program for a service or item when the person
 21 knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules,
 22 or policies to medicaid payment or benefit for the service or item or for the amount of payment requested
 23 or claimed;

24 (b) the person purposely or knowingly:

25 (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback,
 26 bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing
 27 services or items for which payment may be made under the medicaid program or in return for purchasing,
 28 leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or
 29 items from a provider for which payment may be made under the medicaid program; or

30 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient

1 to another provider for the furnishing of services or items for which payment may be made under the
2 medicaid program; or

3 (c) the person, with respect to a managed care contract, health maintenance organization contract,
4 or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to
5 provide covered medically necessary services to eligible recipients as required by the contract.

6 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or
7 federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is
8 NOT considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same
9 protections allowed under federal laws and regulations.

10 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance
11 upon the written authorization OR ADVICE of the department.

12 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
13 not exceeding \$500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
14 jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined
15 \$500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A
16 person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county
17 jail for a term not less than 30 days or more than 1 year.

18 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
19 exceeding \$500 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the
20 value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or
21 both.

22 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of
23 payments or benefits involved is the greater of the value of medicaid payments or benefits received as a
24 result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

25 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
26 transaction may be aggregated in determining the value involved.

27 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in
28 the medicaid program:

29 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
30 terminated from participation in the medical assistance program;

1 (ii) for any period of time not less than 3 years for a second offense, or the person may be
2 permanently terminated from participation in the medical assistance program; or

3 (iii) permanently for a third offense.

4 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not
5 entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the
6 services or items involved and shall repay to the medicaid program any payments or benefits obtained by
7 any person for the services or items involved.

8 (6) The establishment of the criminal offenses specified in this section does not preclude the
9 application of any other provision of law.

10

11 **Section 8.** Section 45-2-101, MCA, is amended to read:

12 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken
13 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
14 the following definitions apply in this title:

15 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
16 communication, and when relevant, a failure or omission to take action.

17 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
18 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
19 in its application to an individual.

20 (3) "Another" means a person or persons, as defined in this code, other than the offender.

21 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
22 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
23 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
24 of public measures that a candidate engages to support or oppose.

25 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
26 includes mental illness or impairment.

27 (6) "Cohabit" means to live together under the representation of being married.

28 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish
29 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
30 same offense or that affects the same person or the same persons or the property of the same person or

1 persons.

2 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions
3 by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,
4 software, or communication facilities that are connected or related to that device in a system or network.

5 (9) "Computer network" means the interconnection of communication systems between computers
6 or computers and remote terminals.

7 (10) "Computer program" means an instruction or statement or a series of instructions or
8 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of
9 a computer or computer system and causes it to perform specified functions.

10 (11) "Computer services" include but are not limited to computer time, data processing, and
11 storage functions.

12 (12) "Computer software" means a set of computer programs, procedures, and associated
13 documentation concerned with the operation of a computer system.

14 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
15 software, or other related computer equipment.

16 (14) "Conduct" means an act or series of acts and the accompanying mental state.

17 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
18 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
19 competent jurisdiction authorized to try the case without a jury.

20 (16) "Correctional institution" means the state prison, county or city jail, or other institution for the
21 incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

22 (17) "Deception" means knowingly to:

23 (a) create or confirm in another an impression that is false and that the offender does not believe
24 to be true;

25 (b) fail to correct a false impression that the offender previously has created or confirmed;

26 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

27 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other
28 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is
29 not a matter of official record; or

30 (e) promise performance that the offender does not intend to perform or knows will not be

1 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

2 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
3 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
4 or occupation.

5 (19) "Deprive" means to withhold property of another:

6 (a) permanently;

7 (b) for such a period as to appropriate a portion of its value;

8 (c) with the purpose to restore it only upon payment of reward or other compensation; or

9 (d) to dispose of the property and use or deal with the property so as to make it unlikely that the
10 owner will recover it.

11 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
12 of the same sex or any form of sexual intercourse with an animal.

13 (21) "Document" means, with respect to offenses involving the medicaid program, any application,
14 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm,
15 or other form.

16 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
17 imprisonment in the state prison for any term exceeding 1 year.

18 ~~(22)~~(23) "Forcible felony" means any felony that involves the use or threat of physical force or
19 violence against any individual.

20 ~~(23)~~(24) A "frisk" is a search by an external patting of a person's clothing.

21 ~~(24)~~(25) "Government" includes any branch, subdivision, or agency of the government of the state
22 or any locality within it.

23 ~~(25)~~(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person
24 affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected
25 person is interested.

26 ~~(26)~~(27) A "house of prostitution" means any place where prostitution or promotion of prostitution
27 is regularly carried on by one or more persons under the control, management, or supervision of another.

28 ~~(27)~~(28) "Human being" means a person who has been born and is alive.

29 ~~(28)~~(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from
30 being in the possession of a person subject to official detention.

1 ~~(29)~~(30) "Inmate" means a person who engages in prostitution in or through the agency of a house
2 of prostitution.

3 ~~(30)~~(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter
4 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more
5 of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
6 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
7 of alcohol by volume.

8 ~~(31)~~(32) An "involuntary act" means any act that is:

- 9 (a) a reflex or convulsion;
10 (b) a bodily movement during unconsciousness or sleep;
11 (c) conduct during hypnosis or resulting from hypnotic suggestion; or
12 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
13 either conscious or habitual.

14 ~~(32)~~(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled
15 by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
16 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
17 to attend as a prospective juror.

18 ~~(33)~~(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance
19 described by a statute defining an offense when the person is aware of the person's own conduct or that
20 the circumstance exists. A person acts knowingly with respect to the result of conduct described by a
21 statute defining an offense when the person is aware that it is highly probable that the result will be caused
22 by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
23 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such
24 as "knowing" or "with knowledge", have the same meaning.

25 ~~(34)~~(35) "Medicaid" means the Montana medical assistance program provided for in Title 53,
26 chapter 6.

27 ~~(35)~~(36) "Medicaid agency" has the meaning in [section 1].

28 ~~(36)~~(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a
29 recipient under the medicaid program.

30 ~~(37)~~(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,

1 or other form:

2 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
3 program; or

4 (ii) that states income, expense, or other information that is or may be used to determine
5 entitlement to or the rate of payment under the medicaid program.

6 (b) The term includes any related documents submitted as a part of or in support of the claim.

7 (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders
8 the person incapable of appreciating the nature of the person's own conduct.

9 ~~(35)~~(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of
10 appreciating or controlling the person's own conduct as a result of the influence of an intoxicating
11 substance.

12 ~~(36)~~(41) "Misdemeanor" means an offense in which the sentence imposed upon conviction is
13 imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is
14 imprisonment in the state prison for any term of 1 year or less.

15 ~~(37)~~(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance
16 described by a statute defining an offense when the person consciously disregards a risk that the result will
17 occur or that the circumstance exists or when the person disregards a risk of which the person should be
18 aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree
19 that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would
20 observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack
21 of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

22 ~~(38)~~(43) "Obtain" means:

23 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
24 offender or to another; and

25 (b) in relation to labor or services, to secure the performance of the labor or service.

26 ~~(39)~~(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away,
27 or the sale, conveyance, or transfer of title to, interest in, or possession of property.

28 ~~(40)~~(45) "Occupied structure" means any building, vehicle, or other place suitable for human
29 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
30 present. Each unit of a building consisting of two or more units separately secured or occupied is a separate

1 occupied structure.

2 ~~(41)~~(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted,
3 or punished for a public offense.

4 ~~(42)~~(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
5 authorized. Offenses are classified as felonies or misdemeanors.

6 ~~(43)~~(48) "Official detention" means imprisonment resulting from a conviction for an offense,
7 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer
8 pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the
9 protection of the welfare of the person detained or for the protection of society. Official detention does not
10 include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest
11 unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

12 ~~(44)~~(49) "Official proceeding" means a proceeding heard or that may be heard before any
13 legislative, judicial, administrative, or other governmental agency or official authorized to take evidence
14 under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony
15 or deposition in connection with the proceeding.

16 ~~(45)~~(50) "Other state" means any state or territory of the United States, the District of Columbia,
17 and the Commonwealth of Puerto Rico.

18 ~~(46)~~(51) "Owner" means a person other than the offender who has possession of or any other
19 interest in the property involved, even though the interest or possession is unlawful, and without whose
20 consent the offender has no authority to exert control over the property.

21 ~~(47)~~(52) "Party official" means a person who holds an elective or appointive post in a political party
22 in the United States by virtue of which the person directs or conducts or participates in directing or
23 conducting party affairs at any level of responsibility.

24 ~~(48)~~(53) "Peace officer" means any person who by virtue of the person's office or public
25 employment is vested by law with a duty to maintain public order or to make arrests for offenses while
26 acting within the scope of the person's authority.

27 ~~(49)~~(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
28 anything else the primary significance of which is economic gain.

29 ~~(50)~~(55) "Person" includes an individual, business association, partnership, corporation,
30 government, or other legal entity and an individual acting or purporting to act for or on behalf of any

1 government or subdivision of government.

2 ~~(51)~~(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
3 to communicate unwillingness to act.

4 ~~(52)~~(57) "Possession" is the knowing control of anything for a sufficient time to be able to
5 terminate control.

6 ~~(53)~~(58) "Premises" includes any type of structure or building and any real property.

7 ~~(54)~~(59) "Property" means any tangible or intangible thing of value. Property includes but is not
8 limited to:

9 (a) real estate;

10 (b) money;

11 (c) commercial instruments;

12 (d) admission or transportation tickets;

13 (e) written instruments that represent or embody rights concerning anything of value, including
14 labor or services, or that are otherwise of value to the owner;

15 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
16 building;

17 (g) electricity, gas, and water;

18 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

19 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
20 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
21 thereof;

22 (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions,
23 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret
24 scientific, technical, merchandising, production, or management information or a secret designed process,
25 procedure, formula, invention, or improvement; and

26 (k) electronic impulses, electronically processed or produced data or information, commercial
27 instruments, computer software or computer programs, in either machine- or human-readable form,
28 computer services, any other tangible or intangible item of value relating to a computer, computer system,
29 or computer network, and any copies thereof.

30 ~~(55)~~(60) "Property of another" means real or personal property in which a person other than the

1 offender has an interest that the offender has no authority to defeat or impair, even though the offender
2 may have an interest in the property.

3 ~~(56)~~(61) "Public place" means any place to which the public or any substantial group has access.

4 ~~(57)~~(62) "Public servant" means any officer or employee of government, including but not limited
5 to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
6 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
7 term "public servant" includes one who has been elected or designated to become a public servant.

8 ~~(58)~~(63) "Purposely"--a person acts purposely with respect to a result or to conduct described by
9 a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause
10 that result. When a particular purpose is an element of an offense, the element is established although the
11 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
12 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

13 ~~(59)~~(64) (a) "Serious bodily injury" means bodily injury that:

14 (i) creates a substantial risk of death;

15 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
16 process of any bodily member or organ; or

17 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
18 or protracted loss or impairment of the function or process of any bodily member or organ.

19 (b) The term includes serious mental illness or impairment.

20 ~~(60)~~(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person
21 of another for the purpose of arousing or gratifying the sexual desire of either party.

22 ~~(61)~~(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by
23 the penis of another person, penetration of the vulva or anus of one person by any body member of another
24 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
25 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
26 penetration, however slight, is sufficient.

27 ~~(62)~~(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise
28 another to commit an offense.

29 ~~(63)~~(68) "State" or "this state" means the state of Montana, all the land and water in respect to
30 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land

1 and water.

2 ~~(64)~~(69) "Statute" means any act of the legislature of this state.

3 ~~(65)~~(70) "Stolen property" means property over which control has been obtained by theft.

4 ~~(66)~~(71) A "stop" is the temporary detention of a person that results when a peace officer orders
5 the person to remain in the peace officer's presence.

6 ~~(67)~~(72) "Tamper" means to interfere with something improperly, meddle with it, make
7 unwarranted alterations in its existing condition, or deposit refuse upon it.

8 ~~(68)~~(73) "Threat" means a menace, however communicated, to:

9 (a) inflict physical harm on the person threatened or any other person or on property;

10 (b) subject any person to physical confinement or restraint;

11 (c) commit any criminal offense;

12 (d) accuse any person of a criminal offense;

13 (e) expose any person to hatred, contempt, or ridicule;

14 (f) harm the credit or business repute of any person;

15 (g) reveal any information sought to be concealed by the person threatened;

16 (h) take action as an official against anyone or anything, withhold official action, or cause the
17 action or withholding;

18 (i) bring about or continue a strike, boycott, or other similar collective action if the person making
19 the threat demands or receives property that is not for the benefit of groups that the person purports to
20 represent; or

21 (j) testify or provide information or withhold testimony or information with respect to another's
22 legal claim or defense.

23 ~~(69)~~(74) (a) "Value" means the market value of the property at the time and place of the crime or,
24 if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within
25 a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the
26 value must be determined as follows:

27 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
28 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of
29 the indebtedness less any portion of the indebtedness that has been satisfied.

30 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any

1 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
2 the instrument might reasonably suffer by virtue of the loss of the instrument.

3 (iii) The value of electronic impulses, electronically produced data or information, computer
4 software or programs, or any other tangible or intangible item relating to a computer, computer system,
5 or computer network is considered to be the amount of economic loss that the owner of the item might
6 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
7 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
8 of the item.

9 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
10 standards set forth in subsection ~~(69)(a)~~ (74)(a), its value is considered to be an amount less than \$500.

11 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
12 whether from the same person or several persons, may be aggregated in determining the value of the
13 property.

14 ~~(70)(75)~~ "Vehicle" means any device for transportation by land, water, or air or by mobile
15 equipment, with provision for transport of an operator.

16 ~~(71)(76)~~ "Weapon" means any instrument, article, or substance that, regardless of its primary
17 function, is readily capable of being used to produce death or serious bodily injury.

18 ~~(72)(77)~~ "Witness" means a person whose testimony is desired in any official proceeding, in any
19 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

20

21 **Section 9.** Section 45-2-103, MCA, is amended to read:

22 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate
23 homicide as defined in 45-5-102(1)(b) or an offense ~~which~~ that involves absolute liability, a person is not
24 guilty of an offense unless, with respect to each element described by the statute defining the offense, ~~he~~
25 a person acts while having one of the mental states ~~described~~ of knowingly, negligently, or purposely ~~in~~
26 ~~subsections (33), (37), and (58) of 45-2-101.~~

27 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental
28 state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

29 (3) The existence of a mental state may be inferred from the acts of the accused and the facts and
30 circumstances connected with the offense.

1 (4) If the statute defining an offense prescribes a particular mental state with respect to the offense
 2 as a whole without distinguishing among the elements ~~thereof of the offense~~, the prescribed mental state
 3 applies to each ~~such~~ element.

4 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning,
 5 or application of the statute defining an offense is not an element of the offense unless the statute clearly
 6 defines it as ~~such~~ an element.

7 (6) A person's reasonable belief that ~~he~~ the person's conduct does not constitute an offense is
 8 a defense if:

9 (a) the offense is defined by an administrative regulation or order ~~which that~~ is not known to ~~him~~
 10 the person and has not been published or otherwise made reasonably available to ~~him~~ the person and ~~he~~
 11 if the person could not have acquired ~~such~~ the knowledge by the exercise of due diligence pursuant to facts
 12 known to ~~him~~ the person;

13 (b) ~~he~~ the person acts in reliance upon a statute ~~which that~~ later is determined to be invalid;

14 (c) ~~he~~ the person acts in reliance upon an order or opinion of the Montana supreme court or a
 15 United States appellate court later overruled or reversed; or

16 (d) ~~he~~ the person acts in reliance upon an official interpretation of the statute, regulation, or order
 17 defining the offense made by a public officer or agency legally authorized to interpret ~~such~~ the statute.

18 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless ~~he~~ the person
 19 may be convicted of an included offense of which ~~he~~ the person would be guilty if the law were as ~~he~~ the
 20 person believed it to be.

21 (8) ~~Any~~ A defense based upon this section is an affirmative defense."
 22

23 **Section 10.** Section 45-2-104, MCA, is amended to read:

24 "**45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each
 25 element ~~thereof of the offense~~, one of the mental states ~~described in subsections (33), (37), and (58)~~ of
 26 knowingly, negligently, or purposely ~~45-2-104~~ only if the offense is punishable by a fine not exceeding
 27 \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability
 28 for the conduct described."
 29

30 **Section 11.** Section 50-20-109, MCA, is amended to read:

1 **"50-20-109. Control of practice of abortion.** (1) ~~No~~ An abortion may not be performed within the
2 state of Montana:

3 (a) except by a licensed physician;

4 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

5 (c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to
6 preserve the life or health of the mother.

7 (2) An abortion under subsection (1)(c) may only be performed if:

8 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
9 writing by ~~him~~ the physician, setting forth in detail the facts upon which ~~he~~ the physician relies in making
10 ~~such~~ the judgment; and

11 (b) two other licensed physicians have first examined the patient and concurred in writing with
12 ~~such~~ the judgment. The foregoing certification and concurrence ~~is~~ are not required if a licensed physician
13 certifies that the abortion is necessary to preserve the life of the mother.

14 (3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section
15 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
16 "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if
17 necessary to preserve the life or health of the mother.

18 (4) ~~No~~ A physician, facility, or other person or agency ~~shall~~ may not engage in solicitation,
19 advertising, or other form of communication ~~having~~ that has the purpose of inviting, inducing, or attracting
20 ~~any~~ a person to come to ~~such~~ the physician, facility, or other person or agency to have an abortion or to
21 purchase abortifacients.

22 (5) Violation of subsections (1), (2), and (3) ~~of this section~~ is a felony. Violation of subsection (4)
23 ~~of this section~~ is a misdemeanor."

24
25 **Section 12.** Section 53-6-106, MCA, is amended to read:

26 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
27 53-6-108, the following definitions apply:

28 (a) "Department" means the department of social and rehabilitation services.

29 (b) "Health care facility" means a health care facility as defined in 50-5-101.

30 (2) The department and the department of health and environmental sciences may enter into

1 agreements with appropriate federal agencies for the purpose of certifying health care facilities for the
2 Montana medicaid program.

3 (3) The department of health and environmental sciences ~~shall~~ may adopt rules ~~prescribing as~~
4 necessary to prescribe minimum standards for the maintenance and operation of health care facilities,
5 ~~including standards.~~ Standards for the quality of care provided by those facilities receiving reimbursement
6 under the Montana medicaid program. ~~These standards must include, as a minimum,~~ be consistent with
7 those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, (42
8 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in Title 42 CFR
9 430, et seq. of the Code of Federal Regulations, as may be amended. The authority to prescribe standards
10 and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department
11 of health and environmental sciences pursuant to Title 50, chapter 5.

12 (4) Standards adopted by the department of health and environmental sciences may include but
13 are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and
14 nutrition, environmental and sanitation, administration, admission policies, patient care planning, training,
15 medication, health services, rehabilitation services, and social services and activities."

16

17 **Section 13.** Section 53-6-107, MCA, is amended to read:

18 **"53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew
19 an agreement with a health care facility that has failed to meet the requirements for certification ~~adopted~~
20 for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable
21 law. The department may also impose sanctions in the form of denial of medicaid payments for new
22 admissions or other penalties or sanctions as described in 53-6-111 or Title XIX of the Social Security Act,
23 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.

24 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% ~~per~~
25 ~~annum~~ a year, for each day that a facility is substantially out of compliance with standards or participation
26 requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not
27 limited to standards adopted by the department of health and environmental sciences under the authority
28 of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and
29 may be applied to the protection of the health and property of residents of health care facilities that the
30 department finds deficient, including but not limited to payment for the costs of relocation of residents to

1 other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of
2 residents for personal funds lost.

3 (3) The department may appoint temporary management personnel to oversee the operation of the
4 facility and to ~~assure~~ ensure the health and safety of the facility's residents if there is a need for temporary
5 management because:

6 (a) an orderly closure of the facility is necessary; or

7 (b) improvements are being made to bring the facility into compliance with applicable standards.

8 (4) The department shall, in the case of an emergency, close the facility or transfer residents in the
9 facility to other facilities, or both."

10

11 **Section 14.** Section 53-6-108, MCA, is amended to read:

12 **"53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the
13 application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity
14 of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more
15 severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the ~~standards~~
16 ~~adopted by the department of health and environmental sciences or those federal standards established in~~
17 ~~53-6-106~~ applicable standards imposed by state or federal laws, regulations, rules, or policies may not
18 exceed ~~\$1,000~~ \$10,000 for each day that the deficiency remains uncorrected. A health care facility
19 aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

20

21 **Section 15.** Section 53-6-111, MCA, is amended to read:

22 **"53-6-111. Department charged with general administration and supervision of medical assistance**
23 **program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules to**
24 **punish fraud.** (1) The department of social and rehabilitation services ~~is hereby authorized and empowered~~
25 ~~to~~ may administer and supervise a vendor payment program of medical assistance under the powers, duties,
26 and functions provided in ~~chapter~~ Title 53, chapter 2, of this title, as amended, and this chapter and as
27 ~~contemplated by the provisions of~~ that is in compliance with Title XIX of the ~~federal~~ Social Security Act.

28 (2) (a) The department is entitled to collect from a provider, and a provider is liable to the
29 department for:

30 (i) the amount of a payment under this part to which the provider was not entitled, regardless of

1 whether the incorrect payment was the result of department or provider error or other cause; and

2 (ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the
3 department for the rate period.

4 (b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department
5 is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30
6 days after the date of mailing of notice of the overpayment by the department to the provider, except that
7 interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

8 (c) The department may collect any amount described in subsection (2)(a) by:

9 (i) withholding current payments to offset the amount due;

10 (ii) applying methods and using a schedule mutually agreeable to the department and the provider;

11 or

12 (iii) any other legal means.

13 (d) The department may suspend payments to a provider for disputed items pending resolution of
14 a dispute.

15 (e) The fact that a provider may have ceased providing services or items under the medical
16 assistance program, may no longer be in business, or may no longer operate a facility, practice, or business
17 does not excuse repayment under this subsection (2).

18 ~~{2}(3)~~ The department shall adopt rules establishing a system of penalties and sanctions applicable
19 to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper
20 activities fraud and abuse. The Subject to the definitions in [section 1], the department shall define by rule
21 these activities which are fraudulent, abusive, or improper rules must include but are not limited to
22 specifications regarding the activities and conduct that constitute fraud and abuse.

23 ~~{3}(4)~~ Subject to subsections (5) and (6), the sanctions imposed under rules
24 adopted by the department under subsection (3) may include but are not limited to:

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

26 (b) ~~withholding of payments to offset previous improper payments to a provider;~~

27 ~~suspension of payments to a provider pending resolution of a dispute involving fraudulent,~~
28 ~~abusive, or improper activities;~~

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

30 (e)~~(c)~~ permanent termination of participation in the medical assistance program; and

1 (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties
 2 applicable to a specific activity, act, or omission involving intentional or knowing violation of specified
 3 standards.

4 ~~(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent,~~
 5 ~~abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from~~
 6 ~~the date of such payment.~~

7 (5) In all cases in which the department may recover medicaid payments or impose a penalty or
 8 sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part
 9 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to
 10 recovery of overpayment or imposition of sanctions.

11 (6) The remedies provided by this section are separate and cumulative to any other administrative,
 12 civil, or criminal remedies available under state or federal law, regulation, rule, or policy."

13
 14 **Section 16.** Section 61-5-405, MCA, is amended to read:

15 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing**
 16 **jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1),
 17 subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the
 18 definition of felony as provided in 45-2-101(21), and 61-7-103, respectively.

19 (2) In addition to convictions mentioned ~~above~~ in subsection (1), the department, for the purpose
 20 of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect
 21 to the conduct reported as it would if ~~such~~ the conduct had occurred in this state for:

22 (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation
 23 of a motor vehicle (61-5-303); and

24 (b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

25 (3) Court abstracts or reports of conviction received by the department that name an individual
 26 licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not
 27 take action against the driver's license or driving privilege of the individual as may be required elsewhere
 28 in this title."

29
 30 **NEW SECTION. Section 17. Codification instruction.** (1) [Sections 1 through 6] are intended to

1 be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part
2 1, apply to [sections 1 through 6].

3 (2) [Section 7] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the
4 provisions of Title 45, chapter 6, part 3, apply to [section 7].

5

6 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
8 applications, the part remains in effect in all valid applications that are severable from the invalid
9 applications.

10

11 **NEW SECTION. Section 19. Effective dates.** (1) [Sections 1 and 6 through 18 and this section]
12 are effective on passage and approval.

13 (2) [Sections 2 through 5] are effective July 1, 1995.

14

-END-