

1 SENATE BILL NO. 114

2 INTRODUCED BY WATERMAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR
6 A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED
7 BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY;
8 REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING REGARDING A DETERMINATION OF
9 ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED
10 TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL
11 REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED
12 FINANCIAL INFORMATION; SPECIFYING LIMITS ON LIABILITY FOR COSTS OF CARE; SPECIFYING
13 COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE;
14 SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR
15 AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S
16 COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406,
17 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING
18 AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2122 **Section 1.** Section 53-1-401, MCA, is amended to read:23 "53-1-401. **Definitions.** As used in this part, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of
26 another time period for inpatients, that is computed on a per visit basis for outpatients, and that is
27 applicable uniformly to each patient without regard to the extent of the services required by the patient and
28 without regard to a distinction between physician services and hospital services.

29 (2) "Ancillary charge" means the expense of providing identifiable, direct, resident services,
30 including but not limited to:

- 1 (a) physicians' services;
- 2 (b) x-ray and laboratory services;
- 3 (c) dental services;
- 4 (d) speech-language pathology and audiology services;
- 5 (e) occupational and physical therapy;
- 6 (f) medical supplies;
- 7 (g) prescribed drugs; and
- 8 (h) specialized medical equipment.

9 (3) "Care" means the care, treatment, support, maintenance, and other services rendered by the
10 department to a resident.

11 (4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary
12 charges for a resident's care that are determined as provided in this part.

13 ~~(4)~~(5) "Department" means the department of public health and human services provided for in
14 2-15-2201.

15 ~~(5)~~(6) "Financially responsible person" means a spouse of a resident, the natural or adoptive
16 parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's
17 or conservator's responsibility for the financial affairs of the person who is a resident under applicable
18 Montana law establishing the duties and limitations of guardianships or conservatorships.

19 ~~(6)~~(7) "Full-time equivalent resident load" means the total daily resident count for the fiscal year
20 divided by the number of days in the year.

21 (8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through
22 the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.

23 ~~(7)~~(9) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous
24 period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit
25 may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term
26 resident.

27 ~~(8)~~(10) "~~Per diem~~" "Per diem charge" means the gross daily budgeted cost of operating an
28 institution or an individual unit of an institution for the state fiscal year (including ~~certain~~ but not limited to
29 contracted medical services, depreciation, and associated department costs but excluding the cost of
30 educational programs, ~~federal grants~~, ancillary charges, and costs not directly identified with patient care)

1 divided by the full-time equivalent resident load for the previous state fiscal year.

2 ~~(9)(11)~~ "Resident" means any person who is receiving care from or who is a resident of an
3 institution listed in 53-1-402.

4 ~~(10)(12)~~ (a) ~~"Third party resource~~ Third party" means any third-party individual or entity that is or
5 may be liable to pay all or part of the charges for a resident's cost of care, including but ~~is~~ not limited to
6 applicable medicare, medicaid, and personal insurance or other similar health care benefits.

7 (b) Third party does not include:

8 (i) a managed care organization administering a mental health managed care program under
9 contract with the department; or

10 (ii) a financially responsible person."

11

12 **Section 2.** Section 53-1-402, MCA, is amended to read:

13 **"53-1-402. Residents subject to per diem and ancillary charges and financially responsible persons**
14 **liable for cost of care.** (1) ~~The department shall assess and collect~~ A resident and a financially responsible
15 person are liable to the department for the resident's cost of care as provided in this part. The cost of care
16 includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents
17 in the following institutions:

18 (a) Montana state hospital;

19 (b) Montana developmental center;

20 (c) Montana veterans' home;

21 (d) eastern Montana veterans' home;

22 (e) Montana mental health nursing care center;

23 (f) Eastmont human services center; and

24 (g) Montana chemical dependency treatment center.

25 (2) This ~~section part~~ part does not apply to the eastern Montana veterans' home if the department
26 contracts with a private vendor to operate the facility as provided for in 10-2-416.

27 (3) ~~This section does not apply to residents of the~~ The Montana state hospital ~~or to~~ and the
28 Montana mental health nursing center ~~to the extent that either of these institutions assesses and collects~~
29 ~~charges through~~ may determine the cost of care using an all-inclusive rate ~~rather than~~ or per diem and
30 ancillary charges if the department contracts with a private entity to operate a mental health managed care

1 program."

2

3 **Section 3.** Section 53-1-403, MCA, is amended to read:

4 "53-1-403. **Rules.** In addition to the specific provisions of this part ~~which that~~ require the
5 department to ~~make~~ adopt rules, the department may ~~make~~ adopt rules ~~for the administration of to~~
6 implement this part. All rules ~~made~~ adopted by the department under the provisions of this part ~~shall~~ must
7 be ~~made~~ adopted pursuant to the provisions of the Montana Administrative Procedure Act."

8

9 **Section 4.** Section 53-1-404, MCA, is amended to read:

10 "53-1-404. ~~When Department to compute per diem to be computed charge.~~ The per diem ~~shall~~
11 charge for the fiscal year must be computed on July 1 of each year by the department. If the budgeted
12 costs of an institution change substantially within the fiscal year, the per diem charge may be adjusted to
13 compensate for those changes."

14

15 **Section 5.** Section 53-1-405, MCA, is amended to read:

16 "53-1-405. ~~Monthly assessment of charges payment amount.~~ (1) A resident and a financially
17 responsible person are liable for the resident's cost of care in an amount that the department determines
18 that the resident or financially responsible person is able to pay. The department shall ~~assess monthly~~
19 ~~against each resident, financially responsible person, or applicable third party resource the full per diem~~
20 ~~charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a~~
21 ~~proportionate share of the ancillary charge, or no ancillary charge~~ determine ability to pay based upon
22 financial information ~~given to~~ and documentation obtained by the department ~~during its~~ through an
23 investigation conducted ~~according to the rules of the department as provided in 53-1-406.~~

24

(2) ~~An assessment made by the department under this section shall be based on the resident's or~~
25 ~~financially responsible person's ability to pay.~~ The department shall ~~prescribe~~ adopt rules ~~which that~~
26 establish criteria and ~~a procedure~~ procedures for determining ability to pay. The criteria established by rules
27 adopted under this section must address factors relevant to the person's ability to pay, including but not
28 limited to:

29

(a) the amount of the resident's or financially responsible person's income, including the anticipated
30 receipt of retroactive benefits, such as veteran's benefits or social security benefits;

1 (b) the amount of the resident's or financially responsible person's assets, including the availability
2 of assets that are liquid or that are able to be readily converted to cash;

3 (c) the amount of the resident's or financially responsible person's fixed expenses for reasonable
4 and necessary housing, utilities, transportation, medical care, food, and clothing;

5 (d) the amount of the resident's or financially responsible person's taxes and other mandatory
6 payments, such as social security withholdings, insurance, child support, restitution, and court-ordered
7 payments;

8 (e) the number of persons dependent upon the resident or financially responsible person for
9 support;

10 (f) the amount of the resident's or financially responsible person's discretionary income;

11 (g) the resident's personal needs requirements while in the institution; and

12 (h) the extent to which requirement of a particular monthly payment or any monthly payment
13 would impose an undue financial burden on the resident or financially responsible person.

14 (3) The department may determine ability to pay and assess charges up to the full cost of care but
15 may require monthly payments in a lesser amount based upon:

16 (a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds,
17 certificates of deposit, or other similar assets;

18 (b) real property of the resident or financially responsible person if:

19 (i) the property has been listed or advertised for sale; or

20 (ii) the property is not occupied as the home of the resident or financially responsible person or as
21 the home of a spouse, dependent child, or parent of a resident or financially responsible person and if there
22 is no reasonable expectation that the resident will return to occupy the property as a home; or

23 (c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security
24 benefits.

25 (4) If the department has determined an ability to pay and has assessed charges but has required
26 monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all
27 or a part of the accumulated difference between the assessed charges and the minimum payment amount:

28 (a) upon sale or liquidation of the assets or real property;

29 (b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security
30 benefits;

1 (c) upon determination of a current ability to pay; or

2 (d) from the resident's or financially responsible person's estate as provided in 53-1-412.

3 (5) The department may not ~~make an assessment which~~ require payment of a monthly amount that
4 would place an undue financial burden on the resident or ~~the~~ financially responsible person.

5 (6) The department shall refund to the resident or financially responsible person any payment made
6 to the department for any month to the extent that the total payments received from the resident,
7 financially responsible person, and third party exceed the resident's cost of care for that month.

8 (7) The fact that a managed care organization contracting with the department to administer a
9 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
10 respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's
11 obligation to pay for the cost of care as provided in this part.

12 (8) The department shall provide a written notice and an opportunity for a hearing regarding a
13 department determination of ability to pay to any resident or financially responsible person who is
14 determined able to pay.

15 (9) In addition to providing the notice required by subsection (8), the department shall bill the
16 resident or financially responsible person monthly for the amount determined in accordance with this
17 section. The bill must state the amount due for the current month, the amount of any payments received
18 during the billing cycle, and the total amount of unpaid costs of care that the department has determined
19 the resident or financially responsible person is able to pay. The bill need not state the current or accrued
20 full cost of care that is or would be payable by a third party.

21 (10) This section may not be construed to reduce the liability of a third party for the resident's full
22 cost of care as provided in this part."

23

24 **Section 6.** Section 53-1-406, MCA, is amended to read:

25 **"53-1-406. Investigation of ability to pay.** (1) Before determining an ability to pay under 53-1-405,
26 the department shall investigate each resident's and each financially responsible person's ability to pay.
27 For purposes of the investigation, the determination of ability to pay, or any later review or redetermination,
28 the department may require the resident or financially responsible person to complete, sign, and submit
29 financial information and documentation, including financial statements on a form supplied by the
30 department.

1 ~~(2)~~ Each agency of the state shall ~~give~~ provide to the department all reasonable assistance ~~to the~~
2 ~~department in obtaining~~ and all requested information and documents necessary for the ~~proper~~ financial
3 investigation of residents or financially responsible persons.

4 ~~(2)(3)~~ Upon request of the department, the resident or financially responsible person shall make
5 available to the department and shall cooperate with the department in obtaining any financial information
6 ~~which and documentation that~~ the department considers essential for the purpose of determining ability to
7 pay and ~~which that~~, under federal law, the department is not prohibited from seeking or obtaining from the
8 resident or financially responsible person. ~~Willful failure~~ The information and documentation that the
9 department is entitled to receive includes but is not limited to:

10 (a) income statements and verification;

11 (b) liability statements and verification;

12 (c) tax returns and related forms, documents, and records;

13 (d) asset statements and descriptions, including valuation appraisals;

14 (e) records of a bank or other financial institution, including account balances, loan statements,
15 account ownership information, and transaction records;

16 (f) expense statements and verification;

17 (g) financial statements, including existing financial statements and financial statements on forms
18 provided by the department;

19 (h) releases authorizing the department to obtain information or documents directly from an
20 employer, creditor, federal agency, financial institution, or other person or entity; and

21 (i) any other information or documentation necessary to the determination.

22 ~~(4)~~ If a resident or financially responsible person fails to provide or cooperate in obtaining the
23 financial information or documentation requested by the department ~~may result in,~~ the department may
24 make a determination of ability to pay based upon any information or documentation available to the
25 department, including a determination of ability to pay up to the full per diem and full ancillary charges cost
26 of care. The determination is effective until such time as the requested information and documentation is
27 are provided and the department makes a new determination of ability to pay, taking into consideration the
28 additional information and documentation.

29 ~~(3) (a)~~ ~~A representative of the department authorized by the director may administer oaths, take~~
30 ~~testimony, and subpoena and compel the attendance of witnesses and the production of books, papers,~~

1 records, and documents in connection with the duty of securing payments for care as provided by this part.

2 ~~(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a~~
 3 ~~district court of the state, may be ordered by the judge to appear and show cause for his disobedience of~~
 4 ~~the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the~~
 5 ~~subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena~~
 6 ~~when so ordered by the judge may be punished for contempt of court on application of the department to~~
 7 ~~the district court.~~

8 (5) In a hearing under 53-1-407, if a hearings examiner determines that information or
 9 documentation is relevant and admissible and orders the resident or financially responsible person to
 10 produce it and if the resident or financially responsible person fails or refuses to produce that information
 11 or documentation, a determination of ability to pay the full cost of care may be affirmed or payment of the
 12 full cost of care ordered, regardless of other information presented."

13
 14 **Section 7.** Section 53-1-407, MCA, is amended to read:

15 **"53-1-407. Appeal of determination of ability to pay.** ~~If a~~ A resident or financially responsible
 16 ~~person disagrees with the final determination of the department as to his~~ aggrieved by a determination of
 17 ~~ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date~~
 18 ~~of the department's determination in any court of record in Montana having jurisdiction of the resident or~~
 19 ~~financially responsible person liable for payment~~ under 53-1-405 may request a hearing pursuant to Title
 20 2, chapter 4, part 6."

21
 22 **Section 8.** Section 53-1-408, MCA, is amended to read:

23 **"53-1-408. Periodic review by department of ability to pay.** ~~(1) At appropriate intervals, the~~ The
 24 ~~department shall review~~ at least annually each determination of ability to pay, ~~and, if there has been a~~
 25 ~~significant change in a resident's or financially responsible person's ability to pay, the department shall~~
 26 ~~make a new determination. However, a~~

27 (2) In addition to the annual review required by subsection (1), the department shall review a
 28 determination of ability to pay upon the request of a resident or financially responsible person if the person
 29 provides the department with documentation of a changed circumstance that would substantially affect the
 30 amount determined under 53-1-405.

- 1 (3) A new determination of ability to pay may not be applied retroactively unless;
- 2 (a) the new determination results in a monthly ~~assessment which~~ payment amount that is less than
- 3 the previous monthly ~~assessment~~ payment amount; or ~~unless~~
- 4 (b) the resident or financially responsible person has ~~materially~~ misrepresented or failed to provide
- 5 any financial information or documentation that the person was obligated to provide under 53-1-406 and
- 6 unless the resident or financially responsible person would have been required to pay a higher monthly
- 7 amount based upon consideration of the complete and correct information and documentation.
- 8 (4) The department ~~shall make~~ may adopt rules to implement the provisions of this section,
- 9 including but not limited to rules for credit or refund of any overpayment resulting from an assessment
- 10 retroactively reduced because of a new determination of ability to pay."

11

12 **Section 9.** Section 53-1-409, MCA, is amended to read:

13 "**53-1-409. Liability** Limitations on liability of resident or financially responsible person for assessed

14 ~~charges cost of care.~~ (1) The resident or financially responsible person is liable only for the ~~per diem and~~

15 ~~ancillary charges~~ cost of care that the department has ~~assessed~~ determined that the person is able to pay

16 and for which the department has billed the resident or financially responsible person. If amounts assessed

17 ~~and billed are~~ the amount payable is retroactively reduced because of a new determination of ability to pay,

18 the resident or financially responsible person ~~is liable only for~~ shall pay only the reduced amount for the

19 period of time covered by the retroactive reduction.

20 (2) The natural or adoptive parents of a long-term resident ~~are liable only for the charges made~~

21 ~~by the department~~ resident may not be required to pay for the resident's cost of care in an amount ~~not to~~

22 ~~exceed~~ exceeding the cost of caring for a normal child at home as determined ~~from standard sources and~~

23 updated annually by the department based upon the annual cost of raising a child, as estimated by the

24 United States department of agriculture.

25 (3) ~~Natural~~ The natural or adoptive parents of a long-term resident ~~are not liable for any charges~~

26 ~~made by the department for care of a long-term resident incurred or accrued subsequent to the resident~~

27 ~~attaining~~ may not be required to pay for the resident's cost of care for periods after the resident attains 18

28 years of age.

29 (4) (a) A resident or financially responsible person is not financially liable for care provided to a

30 resident under any provision of a criminal statute.

1 (b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical
2 dependency treatment center.

3 (5) This section may not be construed to reduce the liability of a third party for a resident's full cost
4 of care as provided in this part."

5

6 **Section 10.** Section 53-1-410, MCA, is amended to read:

7 "**53-1-410. Nonpayment not grounds for ~~release~~ discharge.** A resident of an institution listed in
8 53-1-402 may not be ~~released~~ discharged by reason of the nonpayment of the ~~per diem or the ancillary~~
9 ~~charge~~ resident's cost of care unless, by certification of a physician consulted by the superintendent of the
10 institution, the ~~release~~ discharge is medically advisable."

11

12 **Section 11.** Section 53-1-411, MCA, is amended to read:

13 "**53-1-411. Collections ~~by department of administration from residents and financially responsible~~**
14 **persons.** (1) If a resident or financially responsible person liable for payment of per diem and ancillary
15 charges due under this part refuses or fails to make the payment, it is collectible pay the amount required
16 under this part, any amount remaining unpaid 30 days after the department mails a written demand for
17 payment may be collected:

18 (a) by the department in any manner allowed by law for the collection of debts; or

19 (b) by the department of administration in the manner set forth in Title 17, chapter 4, for the
20 collection of debts owing to the state or by a civil suit brought by the department of administration in the
21 name of the state.

22 (2) A resident's death or discharge from an institution does not reduce or eliminate the obligation
23 of any person to pay an amount required under this part."

24

25 **Section 12.** Section 53-1-412, MCA, is amended to read:

26 "**53-1-412. Collections from estates.** (1) The state department has a claim against the estate of
27 a resident ~~or~~ and against the estate of a financially responsible person for an amount due to the state at
28 the death of the resident or financially responsible person. The attorney general shall collect any claim
29 which the state may have against the estate. However, the amounts that the department determined that
30 the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually

1 paid by the resident, a financially responsible person, or a third party.

2 (2) The fact that a managed care organization contracting with the department to administer a
 3 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
 4 respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of
 5 care as provided in this part.

6 (3) Except as provided in subsection (4), the department's claim under this section is enforceable
 7 against an estate after the death of a resident or financially responsible person. The department's claim
 8 is timely if presented within the time specified in the published notice to creditors in the probate proceeding.

9 (4) The department's claim under subsection (1) may be enforced only to the extent that
 10 enforcement does not deprive a surviving spouse, or dependent child, or parent of the resident or financially
 11 responsible person of:

12 ~~(1)(a)~~ (a) an amount necessary for reasonable living expenses or educational expenses; or

13 ~~(2)(b)~~ (b) real estate while it is occupied as a home by the surviving spouse, or dependent child, or
 14 parent of the resident or financially responsible person."

15

16 **Section 13.** Section 53-1-413, MCA, is amended to read:

17 **"53-1-413. Deposit of payments and collections.** (1) Except as provided in 90-7-220, 90-7-221,
 18 and ~~subsection (2) of this section,~~ the department shall deposit payments and collections of ~~per diem and~~
 19 ~~ancillary charges for a resident's cost of care~~ in the state treasury to the credit of the general fund.

20 (2) ~~Payments from and collections for services provided to residents of the Montana veterans'~~
 21 ~~home must be deposited in the federal special revenue fund account for the benefit of the home, and~~
 22 ~~payments from.~~ Payments and collections for services provided to residents of the Montana chemical
 23 dependency treatment center program must be deposited to an alcohol in the state special revenue account
 24 for the facility.

25 (3) ~~Payments Subject to 90-7-221, payments from a managed care contractor, provided for in~~
 26 ~~53-6-116, organization that is contracting with the department to administer a mental health managed care~~
 27 program for services provided by the Montana state hospital and the Montana mental health nursing care
 28 center must be deposited in the state special revenue ~~fund~~ account, subject to appropriation by the
 29 legislature for the benefit of those institutions."

30

1 **NEW SECTION. Section 14. Automatic assignment of resident's resources from third party.** (1)

2 Upon the provision of care to a resident, the resident is considered to have assigned to the department all
3 third-party payments, benefits, and resources applicable to the resident's care.

4 (2) The department is entitled to all third-party payments, benefits, and resources assigned under
5 this section upon demand and the submission of supporting documentation from the department to the third
6 party. The department is entitled to collect from the third party the full amount payable by the third party,
7 up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially
8 responsible person has been determined able to pay under 53-1-405.

9 (3) The fact that a managed care organization contracting with the department to administer a
10 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
11 respect to the resident does not reduce or otherwise affect the third party's obligation or pay for the cost
12 of care as provided in this part.

13 (4) The department may assign its rights under this section to a managed care organization
14 contracting with the department to administer a mental health managed care program.

15 (5) If a third party that has been notified of the department's or managed care organization's claim
16 under this section pays benefits, resources, or other amounts to a resident, financially responsible person,
17 or another person or entity without satisfying the department's or managed care organization's claim, the
18 third party is liable to the department or to the managed care organization for the amount that the
19 department or managed care organization was entitled to receive under this part.

20
21 **NEW SECTION. Section 15. Codification instruction.** [Section 14] is intended to be codified as
22 an integral part of Title 53, chapter 1, part 4, and the provisions of Title 53, chapter 1, part 4, apply to
23 [section 14].

24
25 **NEW SECTION. Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
27 applications, the part remains in effect in all valid applications that are severable from the invalid
28 applications.

29
30 **NEW SECTION. Section 17. Applicability.** (1) Except as provided in subsection (2), [this act]

1 applies to care provided on or after July 1, 1997.

2 (2) [Section 11] applies to proceedings begun on or after July 1, 1997.

3

4 NEW SECTION. **Section 18. Effective date.** [This act] is effective July 1, 1997.

5

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0114, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to liability for a resident's cost of care in a state institution; specifying factors to be considered by the Department of Public Health and Human Services in determining the ability to pay; requiring notice of and an opportunity for a hearing regarding a determination of ability to pay; specifying billing procedures; specifying the information to be provided to and considered by the department in a financial investigation; providing for annual review of ability to pay; specifying the effect of a failure to provide required financial information; specifying limits on liability for costs of care; specifying collection procedures; specifying the extent of recovery from a decedent's estate; specifying the effect and treatment of certain managed care payments; and providing for automatic assignment of third-party payments to the department for a resident's cost of care.

ASSUMPTIONS:

1. The effective date is July 1, 1997.
2. The Department of Public Health and Human Services (DPHHS) will implement the Mental Health Access Plan (MHAP), the state funded mental health managed care program, effective April 1, 1997.
3. Current state law precludes DPHHS from billing residents for the cost of their care at the Montana State Hospital (MSH) and at the Montana Mental Health Nursing Care Center (MMHNCC) if charges are based upon an all-inclusive rate.
4. The proposed legislation removes this restriction.
5. Under the MHAP, DPHHS may assess cost of care based upon an all-inclusive daily rate.
6. Under current law, direct payments of insurance benefits to residents of state institutions average approximately \$3,000 per year.
7. Under current law, all collections for cost of care are deposited directly to the general fund. Funding for the state institutions is provided through a combination of general fund, state special revenue, and federal funds.

FISCAL IMPACT:

Reimbursements for care:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Insurance Payments	482,000	482,000
Private Payments	2,004,000	2,004,000
Medicaid	0	0
Medicare	<u>90,000</u>	<u>90,000</u>
Total Collections	2,576,000	2,576,000

Revenues:

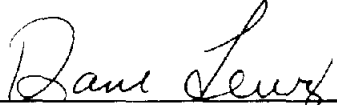
General Fund Transfers (01)	2,576,000	2,576,000
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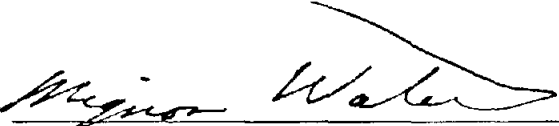
Net Impact on Fund Balance: (Revenue minus expense)

General Fund (01)	2,576,000	2,576,000
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TECHNICAL NOTES:

The July 1, 1997 effective date does not correspond to the anticipated implementation date for the MHAP on April 1, 1997. As a result, in accordance with the above assumptions, the state could potentially forego \$644,000 in general fund revenue during fiscal year 1997. (\$2,576,000 * 1/4)

 1-13-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1-13-97
 MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0114, as introduced

SB 114

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for SB0114, as Introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws relating to liability for a resident's cost of care in a state institution; specifying factors to be considered by the Department of Public Health and Human Services in determining the ability to pay; requiring notice of and an opportunity for a hearing regarding a determination of ability to pay; specifying billing procedures; specifying the information to be provided to and considered by the department in a financial investigation; providing for annual review of ability to pay; specifying the effect of a failure to provide required financial information; specifying limits on liability for costs of care; specifying collection procedures; specifying the extent of recovery from a decedent's estate; specifying the effect and treatment of certain managed care payments; and providing for automatic assignment of third-party payments to the department for a resident's cost of care.

ASSUMPTIONS:

1. The effective date is July 1, 1997.
2. The Department of Public Health and Human Services (DPHHS) will implement the Mental Health Access Plan (MHAP), the state funded mental health managed care program, effective April 1, 1997.
3. Under current law, all collections for cost of care at the Montana State Hospital (MSH) and at the Montana Mental Health Nursing Care Center (MMHNCC) are deposited directly to the general fund. (During fiscal 1996, collections totaled \$17.7 million.). Funding for these institutions is provided through a combination of direct appropriations of general fund, state special revenue, and federal funds.
4. Current state law precludes DPHHS from billing residents of these institutions for the cost of their care if charges are based upon an all-inclusive rate. Under the MHAP, DPHHS proposes to assess cost of care based upon an all-inclusive daily rate.
4. The proposed legislation removes this restriction.
5. Under current law, direct payments of insurance benefits to residents of state institutions average approximately \$3,000 per year.
6. The HJR 2 estimates for general fund revenue contain institutional reimbursements totaling approximately \$17 million and assume third party recoveries.
7. If this legislation is not enacted, insurance payments (\$482,000), private payments (\$2,004,000), and Medicare (\$90,000) totaling \$2,576,000 in collections each year of the 1999 biennium, which are deposited to the general fund, would not be recovered.


FISCAL IMPACT:

None relative to HJR 2 assumptions. See Assumption 7).

TECHNICAL NOTES:

The HJR2 estimates of general fund revenue derived from collections at MSH and MMHNCC approximately total the amount of revenues anticipated to be generated if this legislation is enacted. However, if this legislation is not enacted, the state will not be able to collect approximately \$2.5 million in funds which would be deposited to the general fund.. For this reason, the fiscal impact of this legislation is assumed to be revenue neutral.

The July 1, 1997 effective date does not correspond to the anticipated implementation date for the MHAP on April 1, 1997. As a result, in accordance with the above assumptions, the state could potentially lose \$644,000 in general fund revenue during fiscal year 1997 relative to HJR 2 assumptions. ($\$2,576,000 * 1/4$)


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


MIGNON WATERMAN, PRIMARY SPONSOR DATE

Revised Fiscal Note for SB0114, Introduced

Rev. SB114 #2

APPROVED BY COM ON
STATE ADMINISTRATION

1 SENATE BILL NO. 114

2 INTRODUCED BY WATERMAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR
6 A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED
7 BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY;
8 REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING REGARDING A DETERMINATION OF
9 ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED
10 TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL
11 REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED
12 FINANCIAL INFORMATION; SPECIFYING LIMITS ON LIABILITY FOR COSTS OF CARE; SPECIFYING
13 COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE;
14 SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR
15 AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S
16 COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406,
17 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING
18 AN EFFECTIVE DATE DATES AND AN APPLICABILITY DATE DATES."

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

21
22 **Section 1.** Section 53-1-401, MCA, is amended to read:

23 **"53-1-401. Definitions.** As used in this part, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of
26 another time period for inpatients, that is computed on a per visit basis for outpatients, and that is
27 applicable uniformly to each patient without regard to the extent of the services required by the patient and
28 without regard to a distinction between physician services and hospital services.

29 (2) "Ancillary charge" means the expense of providing identifiable, direct, resident services,
30 including but not limited to:

- 1 (a) physicians' services;
- 2 (b) x-ray and laboratory services;
- 3 (c) dental services;
- 4 (d) speech-language pathology and audiology services;
- 5 (e) occupational and physical therapy;
- 6 (f) medical supplies;
- 7 (g) prescribed drugs; and
- 8 (h) specialized medical equipment.
- 9 (3) "Care" means the care, treatment, support, maintenance, and other services rendered by the
10 department to a resident.
- 11 (4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary
12 charges for a resident's care that are determined as provided in this part.
- 13 ~~(4)~~(5) "Department" means the department of public health and human services provided for in
14 2-15-2201.
- 15 ~~(5)~~(6) "Financially responsible person" means a spouse of a resident, the natural or adoptive
16 parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's
17 or conservator's responsibility for the financial affairs of the person who is a resident under applicable
18 Montana law establishing the duties and limitations of guardianships or conservatorships.
- 19 ~~(6)~~(7) "Full-time equivalent resident load" means the total daily resident count for the fiscal year
20 divided by the number of days in the year.
- 21 (8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through
22 the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.
- 23 ~~(7)~~(9) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous
24 period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit
25 may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term
26 resident.
- 27 ~~(8)~~(10) "~~Per diem~~" "Per diem charge" means the gross daily budgeted cost of operating an
28 institution or an individual unit of an institution for the state fiscal year (including certain but not limited to
29 contracted medical services, depreciation, and associated department costs but excluding the cost of
30 educational programs, federal grants, ancillary charges, and costs not directly identified with patient care)

1 divided by the full-time equivalent resident load for the previous state fiscal year.

2 ~~(9)(11)~~ "Resident" means any person who is receiving care from or who is a resident of an
3 institution listed in 53-1-402.

4 ~~(10)(12)~~ (a) ~~"Third party resource~~ Third party" means any third-party individual or entity that is or
5 may be liable to pay all or part of the charges for a resident's cost of care, including but is not limited to
6 applicable medicare, medicaid, and personal insurance or other similar health care benefits.

7 (b) Third party does not include:

8 (i) a managed care organization administering a mental health managed care program under
9 contract with the department; or

10 (ii) a financially responsible person."

11

12 **Section 2.** Section 53-1-402, MCA, is amended to read:

13 **"53-1-402. Residents ~~subject to per diem and ancillary charges~~ and financially responsible persons**
14 **liable for cost of care.** (1) ~~The department shall assess and collect~~ A resident and a financially responsible
15 person are liable to the department for the resident's cost of care as provided in this part. The cost of care
16 includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents
17 in the following institutions:

18 (a) Montana state hospital;

19 (b) Montana developmental center;

20 (c) Montana veterans' home;

21 (d) eastern Montana veterans' home;

22 (e) Montana mental health nursing care center;

23 (f) Eastmont human services center; and

24 (g) Montana chemical dependency treatment center.

25 (2) ~~This section part does not apply to the~~ THE eastern Montana veterans' home MAY ASSESS
26 CHARGES ON EITHER A PER DIEM AND ANCILLARY CHARGE BASIS OR AN ALL-INCLUSIVE RATE BASIS
27 if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

28 (3) ~~This section does not apply to residents of the~~ The Montana state hospital ~~or to~~ and the
29 Montana mental health nursing center ~~to the extent that either of these institutions assesses and collects~~
30 charges through may determine the cost of care using an all-inclusive rate rather than or per diem and

1 ancillary charges if the department contracts with a private entity to operate a mental health managed care
 2 program."

3
 4 **Section 3.** Section 53-1-403, MCA, is amended to read:

5 "53-1-403. **Rules.** In addition to the specific provisions of this part ~~which that~~ require the
 6 department to ~~make~~ adopt rules, the department may ~~make~~ adopt rules ~~for the administration of to~~
 7 implement this part. All rules ~~made~~ adopted by the department under the provisions of this part ~~shall~~ must
 8 be ~~made~~ adopted pursuant to the provisions of the Montana Administrative Procedure Act."

9
 10 **Section 4.** Section 53-1-404, MCA, is amended to read:

11 "53-1-404. ~~When Department to compute per diem to be computed~~ charge. The per diem ~~shall~~
 12 charge for the fiscal year must be computed on July 1 of each year by the department. If the budgeted
 13 costs of an institution change substantially within the fiscal year, the per diem charge may be adjusted to
 14 compensate for those changes."

15
 16 **Section 5.** Section 53-1-405, MCA, is amended to read:

17 "53-1-405. ~~Monthly assessment of charges~~ payment amount. (1) A resident and a financially
 18 responsible person are liable for the resident's cost of care in an amount that the department determines
 19 that the resident or financially responsible person is able to pay. The department shall ~~assess monthly~~
 20 ~~against each resident, financially responsible person, or applicable third party resource the full per diem~~
 21 ~~charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a~~
 22 ~~proportionate share of the ancillary charge, or no ancillary charge~~ determine ability to pay based upon
 23 financial information ~~given to~~ and documentation obtained by the department during its through an
 24 investigation conducted ~~according to the rules of the department~~ as provided in 53-1-406.

25 (2) ~~An assessment made by the department under this section shall be based on the resident's or~~
 26 ~~financially responsible person's ability to pay.~~ The department shall ~~prescribe~~ adopt rules ~~which that~~
 27 establish criteria and ~~a procedure~~ procedures for determining ability to pay. The criteria established by rules
 28 adopted under this section must address factors relevant to the person's ability to pay, including but not
 29 limited to:

30 (a) the amount of the resident's or financially responsible person's income, including the anticipated

- 1 receipt of retroactive benefits, such as veteran's benefits or social security benefits;
- 2 (b) the amount of the resident's or financially responsible person's assets, including the availability
 3 of assets that are liquid or that are able to be readily converted to cash;
- 4 (c) the amount of the resident's or financially responsible person's fixed expenses for reasonable
 5 and necessary housing, utilities, transportation, medical care, food, and clothing;
- 6 (d) the amount of the resident's or financially responsible person's taxes and other mandatory
 7 payments, such as social security withholdings, insurance, child support, restitution, and court-ordered
 8 payments;
- 9 (e) the number of persons dependent upon the resident or financially responsible person for
 10 support;
- 11 (f) the amount of the resident's or financially responsible person's discretionary income;
- 12 (g) the resident's personal needs requirements while in the institution; and
- 13 (h) the extent to which requirement of a particular monthly payment or any monthly payment
 14 would impose an undue financial burden on the resident or financially responsible person.
- 15 (3) The department may determine ability to pay and assess charges up to the full cost of care but
 16 may require monthly payments in a lesser amount based upon:
- 17 (a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds,
 18 certificates of deposit, or other similar assets;
- 19 (b) real property of the resident or ~~financially responsible person~~ THE RESIDENT'S SPOUSE if:
 20 (i) the property has been listed or advertised for sale; or
 21 (ii) the property is not occupied as the home of the resident or ~~financially responsible person~~ or as
 22 ~~the home of a spouse, dependent child, or parent of a resident or financially responsible person,~~ THE
 23 RESIDENT'S SPOUSE, OR A DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S
 24 SPOUSE and if there is no reasonable expectation that the resident, THE RESIDENT'S SPOUSE, OR A
 25 DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S SPOUSE will return to occupy
 26 the property as a home; or
- 27 (c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security
 28 benefits.
- 29 (4) If the department has determined an ability to pay and has assessed charges but has required
 30 monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all

1 or a part of the accumulated difference between the assessed charges and the minimum payment amount:

2 (a) upon sale or liquidation of the assets or real property;

3 (b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security
4 benefits;

5 (c) upon determination of a current ability to pay; or

6 (d) from the resident's or financially responsible person's estate as provided in 53-1-412.

7 (5) The department may not ~~make an assessment which~~ require payment of a monthly amount that
8 would place an undue financial burden on the resident or the financially responsible person.

9 (6) The department shall refund to the resident or financially responsible person any payment made
10 to the department for any month to the extent that the total payments received from the resident,
11 financially responsible person, and third party exceed the resident's cost of care for that month.

12 (7) The fact that a managed care organization contracting with the department to administer a
13 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
14 respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's
15 obligation to pay for the cost of care as provided in this part.

16 (8) The department shall provide a written notice and an opportunity for a hearing regarding a
17 department determination of ability to pay to any resident or financially responsible person who is
18 determined able to pay.

19 (9) In addition to providing the notice required by subsection (8), the department shall bill the
20 resident or financially responsible person monthly for the amount determined in accordance with this
21 section. The bill must state the amount due for the current month, the amount of any payments received
22 during the billing cycle, and the total amount of unpaid costs of care that the department has determined
23 the resident or financially responsible person is able to pay. The bill need not state the current or accrued
24 full cost of care that is or would be payable by a third party.

25 (10) This section may not be construed to reduce the liability of a third party for the resident's full
26 cost of care as provided in this part."

27
28 **Section 6.** Section 53-1-406, MCA, is amended to read:

29 **"53-1-406. Investigation of ability to pay.** (1) Before determining an ability to pay under 53-1-405,
30 the department shall investigate each resident's and each financially responsible person's ability to pay.

1 For purposes of the investigation, the determination of ability to pay, or any later review or redetermination,
 2 the department may require the resident or financially responsible person to complete, sign, and submit
 3 financial information and documentation, including financial statements on a form supplied by the
 4 department.

5 (2) Each agency of the state shall ~~give~~ provide to the department all reasonable assistance ~~to the~~
 6 ~~department in obtaining~~ and all requested information and documents necessary for the ~~proper~~ financial
 7 investigation of residents or financially responsible persons. THE DEPARTMENT OF REVENUE MAY NOT
 8 PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE CONSENT
 9 OF THE TAXPAYER.

10 ~~(2)(3)~~ Upon request of the department, the resident or financially responsible person shall make
 11 available to the department and shall cooperate with the department in obtaining any financial information
 12 ~~which~~ and documentation that the department considers essential for the purpose of determining ability to
 13 pay and ~~which that~~, under federal law, the department is not prohibited from seeking or obtaining from the
 14 resident or financially responsible person. ~~Willful failure~~ The information and documentation that the
 15 department is entitled to receive includes but is not limited to:

16 (a) income statements and verification;

17 (b) liability statements and verification;

18 (c) tax returns and related forms, documents, and records, BUT THE DEPARTMENT OF REVENUE
 19 MAY NOT PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE
 20 CONSENT OF THE TAXPAYER;

21 (d) asset statements and descriptions, including valuation appraisals;

22 (e) records of a bank or other financial institution, including account balances, loan statements,
 23 account ownership information, and transaction records;

24 (f) expense statements and verification;

25 (g) financial statements, including existing financial statements and financial statements on forms
 26 provided by the department;

27 (h) releases authorizing the department to obtain information or documents directly from an
 28 employer, creditor, federal agency, financial institution, or other person or entity; and

29 (i) any other information or documentation necessary to the determination.

30 (4) If a resident or financially responsible person fails to provide or cooperate in obtaining the

1 financial information or documentation requested by the department ~~may result in, the department may~~
 2 make a determination of ability to pay based upon any information or documentation available to the
 3 department, including a determination of ability to pay up to the full per diem and full ancillary charges cost
 4 of care. The determination is effective until such time as the requested information and documentation is
 5 are provided and the department makes a new determination of ability to pay, taking into consideration the
 6 additional information and documentation.

7 ~~(3) (a) A representative of the department authorized by the director may administer oaths, take~~
 8 ~~testimony, and subpoena and compel the attendance of witnesses and the production of books, papers,~~
 9 ~~records, and documents in connection with the duty of securing payments for care as provided by this part.~~

10 ~~(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a~~
 11 ~~district court of the state, may be ordered by the judge to appear and show cause for his disobedience of~~
 12 ~~the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the~~
 13 ~~subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena~~
 14 ~~when so ordered by the judge may be punished for contempt of court on application of the department to~~
 15 ~~the district court.~~

16 (5) In a hearing under 53-1-407, if a hearings examiner determines that information or
 17 documentation is relevant and admissible and orders the resident or financially responsible person to
 18 produce it and if the resident or financially responsible person fails or refuses to produce that information
 19 or documentation, a determination of ability to pay the full cost of care may be affirmed or payment of the
 20 full cost of care ordered, regardless of other information presented."

21

22 **Section 7.** Section 53-1-407, MCA, is amended to read:

23 **"53-1-407. Appeal of determination of ability to pay.** ~~If a~~ A resident or financially responsible
 24 ~~person disagrees with the final determination of the department as to his~~ aggrieved by a determination of
 25 ~~ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date~~
 26 ~~of the department's determination in any court of record in Montana having jurisdiction of the resident or~~
 27 ~~financially responsible person liable for payment under 53-1-405 may request a hearing pursuant to Title~~
 28 2, chapter 4, part 6."

29

30 **Section 8.** Section 53-1-408, MCA, is amended to read:

1 **"53-1-408. Periodic review by department of ability to pay.** ~~(1) At appropriate intervals, the~~ The
 2 department shall review at least annually each determination of ability to pay, and, if there has been a
 3 significant change in a resident's or financially responsible person's ability to pay, the department shall
 4 make a new determination. ~~However, a~~

5 (2) In addition to the annual review required by subsection (1), the department shall review a
 6 determination of ability to pay upon the request of a resident or financially responsible person if the person
 7 provides the department with documentation of a changed circumstance that would substantially affect the
 8 amount determined under 53-1-405.

9 (3) A new determination of ability to pay may not be applied retroactively unless:

10 (a) the new determination results in a monthly ~~assessment which~~ payment amount that is less than
 11 the previous monthly ~~assessment~~ payment amount; or ~~unless~~

12 (b) the resident or financially responsible person has ~~materially~~ misrepresented or failed to provide
 13 any financial information or documentation that the person was obligated to provide under 53-1-406 and
 14 unless the resident or financially responsible person would have been required to pay a higher monthly
 15 amount based upon consideration of the complete and correct information and documentation.

16 (4) The department ~~shall make~~ may adopt rules to implement the provisions of this section,
 17 including but not limited to rules for credit or refund of any overpayment resulting from an assessment
 18 retroactively reduced because of a new determination of ability to pay."

19
 20 **Section 9.** Section 53-1-409, MCA, is amended to read:

21 **"53-1-409. Liability Limitations on liability of resident or financially responsible person for assessed**
 22 **~~charges cost of care.~~** (1) The resident or financially responsible person is liable only for the ~~per diem and~~
 23 ~~ancillary charges~~ cost of care that the department has ~~assessed~~ determined that the person is able to pay
 24 and for which the department has billed the resident or financially responsible person. If ~~amounts assessed~~
 25 ~~and billed are~~ the amount payable is retroactively reduced because of a new determination of ability to pay,
 26 the resident or financially responsible person ~~is liable only for~~ shall pay only the reduced amount for the
 27 period of time covered by the retroactive reduction.

28 (2) The natural or adoptive parents of a long-term ~~residents are liable only for the charges made~~
 29 by the department resident may not be required to pay for the resident's cost of care in an amount ~~not to~~
 30 ~~exceed~~ exceeding the cost of caring for a normal child at home as determined ~~from standard sources and~~

1 updated annually by the department based upon the annual cost of raising a child, as estimated by the
 2 United States department of agriculture.

3 (3) ~~Natural~~ The natural or adoptive parents of a long-term resident ~~are not liable for any charges~~
 4 ~~made by the department for care of a long-term resident incurred or accrued subsequent to the resident~~
 5 attaining may not be required to pay for the resident's cost of care for periods after the resident attains 18
 6 years of age.

7 (4) (a) A resident or financially responsible person is not financially liable for care provided to a
 8 resident under any provision of a criminal statute.

9 (b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical
 10 dependency treatment center.

11 (5) This section may not be construed to reduce the liability of a third party for a resident's full cost
 12 of care as provided in this part."

13

14 **Section 10.** Section 53-1-410, MCA, is amended to read:

15 "**53-1-410. Nonpayment not grounds for ~~release~~ discharge.** A resident of an institution listed in
 16 53-1-402 may not be ~~released~~ discharged by reason of the nonpayment of the ~~per diem or the ancillary~~
 17 ~~charge~~ resident's cost of care unless, by certification of a physician consulted by the superintendent of the
 18 institution, the ~~release~~ discharge is medically advisable."

19

20 **Section 11.** Section 53-1-411, MCA, is amended to read:

21 "**53-1-411. Collections ~~by department of administration from residents and financially responsible~~**
 22 **persons.** (1) ~~If a resident or financially responsible person liable for payment of per diem and ancillary~~
 23 ~~charges due under this part refuses or fails to make the payment, it is collectible~~ pay the amount required
 24 under this part, any amount remaining unpaid 30 days after the department mails a written demand for
 25 payment may be collected:

26 (a) by the department in any manner allowed by law for the collection of debts; or

27 (b) by the department of administration in the manner set forth in Title 17, chapter 4, for the
 28 collection of debts owing to the state or by a civil suit brought by the department of administration in the
 29 name of the state.

30 (2) A resident's death or discharge from an institution does not reduce or eliminate the obligation

1 of any person to pay an amount required under this part."

2

3 **Section 12.** Section 53-1-412, MCA, is amended to read:

4 **"53-1-412. Collections from estates.** (1) The state department has a claim against the estate of
 5 a resident ~~or~~ and against the estate of a financially responsible person for an amount due to the state at
 6 the death of the resident or financially responsible person. The attorney general shall collect any claim
 7 which the state may have against the estate. However, the amounts that the department determined that
 8 the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually
 9 paid by the resident, a financially responsible person, or a third party.

10 (2) The fact that a managed care organization contracting with the department to administer a
 11 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
 12 respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of
 13 care as provided in this part.

14 (3) Except as provided in subsection (4), the department's claim under this section is enforceable
 15 against an estate after the death of a resident or financially responsible person. The department's claim
 16 is timely if presented within the time specified in the published notice to creditors in the probate proceeding.

17 (4) The department's claim under subsection (1) may be enforced only to the extent that
 18 enforcement does not deprive a surviving spouse, or dependent child, or parent of the resident or financially
 19 responsible person of:

20 ~~(1)(a)~~ an amount necessary for reasonable living expenses or educational expenses; or

21 ~~(2)(b)~~ real estate while it is occupied as a home by the surviving spouse, or dependent child, or
 22 parent of the resident or financially responsible person."

23

24 **Section 13.** Section 53-1-413, MCA, is amended to read:

25 **"53-1-413. Deposit of payments and collections.** (1) Except as provided in 90-7-220, 90-7-221,
 26 and subsection ~~(2)~~ of this section, the department shall deposit payments and collections of per diem and
 27 ancillary charges for a resident's cost of care in the state treasury to the credit of the general fund.

28 (2) Payments from and collections for services provided to residents of the Montana veterans'
 29 home must be deposited in the federal special revenue fund account for the benefit of the home, and
 30 payments from. Payments and collections for services provided to residents of the Montana chemical

1 dependency treatment center ~~program~~ must be deposited ~~to an alcohol in the~~ state special revenue account
2 for the facility.

3 (3) ~~Payments~~ Subject to 90-7-221, payments from a managed care ~~contractor, provided for in~~
4 ~~53-6-116, organization that is contracting with the department to administer a mental health managed care~~
5 program for services provided by the Montana state hospital and the Montana mental health nursing care
6 center must be deposited in the state special revenue ~~fund~~ account, subject to appropriation by the
7 legislature for the benefit of those institutions."

8

9 **NEW SECTION. Section 14. Automatic assignment of resident's resources from third party.** (1)
10 Upon the provision of care to a resident, the resident is considered to have assigned to the department all
11 third-party payments, benefits, and resources applicable to the resident's care.

12 (2) The department is entitled to all third-party payments, benefits, and resources assigned under
13 this section upon demand and the submission of supporting documentation from the department to the third
14 party. The department is entitled to collect from the third party the full amount payable by the third party,
15 up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially
16 responsible person has been determined able to pay under 53-1-405.

17 (3) The fact that a managed care organization contracting with the department to administer a
18 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
19 respect to the resident does not reduce or otherwise affect the third party's obligation ~~or TO~~ pay for the
20 cost of care as provided in this part.

21 (4) The department may assign its rights under this section to a managed care organization
22 contracting with the department to administer a mental health managed care program.

23 (5) If a third party that has been notified of the department's or managed care organization's claim
24 under this section pays benefits, resources, or other amounts to a resident, financially responsible person,
25 or another person or entity without satisfying the department's or managed care organization's claim, the
26 third party is liable to the department or to the managed care organization for the amount that the
27 department or managed care organization was entitled to receive under this part.

28

29 **NEW SECTION. Section 15. Codification instruction.** [Section 14] is intended to be codified as
30 an integral part of Title 53, chapter 1, part 4, and the provisions of Title 53, chapter 1, part 4, apply to

1 [section 14].

2

3 NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
5 applications, the part remains in effect in all valid applications that are severable from the invalid
6 applications.

7

8 NEW SECTION. Section 17. Applicability. (1) Except as provided in ~~subsection~~ SUBSECTIONS (2)
9 AND (3), [this act] applies to care provided on or after July 1, 1997.

10 (2) [Section 11] applies to proceedings begun on or after July 1, 1997.

11 (3) [SECTION 2] APPLIES TO CARE PROVIDED TO A RESIDENT, AS DEFINED IN 53-1-401, ON OR
12 AFTER [THE EFFECTIVE DATE OF SECTION 2].

13

14 NEW SECTION. Section 18. Effective date DATES. ~~{This (1) EXCEPT AS PROVIDED IN~~
15 SUBSECTION (2), [THIS act] is effective July 1, 1997.

16 (2) [SECTION 2 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

17

-END-

1 SENATE BILL NO. 114

2 INTRODUCED BY WATERMAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR
6 A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED
7 BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY;
8 REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING REGARDING A DETERMINATION OF
9 ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED
10 TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL
11 REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED
12 FINANCIAL INFORMATION; SPECIFYING LIMITS ON LIABILITY FOR COSTS OF CARE; SPECIFYING
13 COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE;
14 SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR
15 AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S
16 COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406,
17 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING
18 AN EFFECTIVE ~~DATE~~ DATES AND AN APPLICABILITY ~~DATE~~ DATES."

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

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

1 SENATE BILL NO. 114

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14 SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR
15 AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S
16 COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406,
17 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING
18 AN EFFECTIVE DATE DATES AND AN APPLICABILITY DATE DATES."

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

21
22 **Section 1.** Section 53-1-401, MCA, is amended to read:

23 **"53-1-401. Definitions.** As used in this part, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of
26 another time period for inpatients, that is computed on a per visit basis for outpatients, and that is
27 applicable uniformly to each patient without regard to the extent of the services required by the patient and
28 without regard to a distinction between physician services and hospital services.

29 (2) "Ancillary charge" means the expense of providing identifiable, direct, resident services,
30 including but not limited to:

- 1 (a) physicians' services;
- 2 (b) x-ray and laboratory services;
- 3 (c) dental services;
- 4 (d) speech-language pathology and audiology services;
- 5 (e) occupational and physical therapy;
- 6 (f) medical supplies;
- 7 (g) prescribed drugs; and
- 8 (h) specialized medical equipment.

9 (3) "Care" means the care, treatment, support, maintenance, and other services rendered by the
10 department to a resident.

11 (4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary
12 charges for a resident's care that are determined as provided in this part.

13 ~~(4)(5)~~ "Department" means the department of public health and human services provided for in
14 2-15-2201.

15 ~~(5)(6)~~ "Financially responsible person" means a spouse of a resident, the natural or adoptive
16 parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's
17 or conservator's responsibility for the financial affairs of the person who is a resident under applicable
18 Montana law establishing the duties and limitations of guardianships or conservatorships.

19 ~~(6)(7)~~ "Full-time equivalent resident load" means the total daily resident count for the fiscal year
20 divided by the number of days in the year.

21 (8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through
22 the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.

23 ~~(7)(9)~~ "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous
24 period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit
25 may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term
26 resident.

27 ~~(8)(10)~~ ~~"Per diem"~~ "Per diem charge" means the gross daily budgeted cost of operating an
28 institution or an individual unit of an institution for the state fiscal year (including ~~certain~~ but not limited to
29 contracted medical services, depreciation, and associated department costs but excluding the cost of
30 educational programs, ~~federal grants~~, ancillary charges, and costs not directly identified with patient care)

1 divided by the full-time equivalent resident load for the previous state fiscal year.

2 ~~(9)(11)~~ "Resident" means any person who is receiving care from or who is a resident of an
3 institution listed in 53-1-402.

4 ~~(10)(12)~~ (a) "~~Third-party resource~~ Third party" means any third-party individual or entity that is or
5 may be liable to pay all or part of the charges for a resident's cost of care, including but is not limited to
6 applicable medicare, medicaid, and personal insurance or other similar health care benefits.

7 (b) Third party does not include:

8 (i) a managed care organization administering a mental health managed care program under
9 contract with the department; or

10 (ii) a financially responsible person."

11

12 **Section 2.** Section 53-1-402, MCA, is amended to read:

13 "**53-1-402. Residents ~~subject to per diem and ancillary charges and financially responsible persons~~**
14 **liable for cost of care.** (1) ~~The department shall assess and collect~~ A resident and a financially responsible
15 person are liable to the department for the resident's cost of care as provided in this part. The cost of care
16 includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents
17 in the following institutions:

18 (a) Montana state hospital;

19 (b) Montana developmental center;

20 (c) Montana veterans' home;

21 (d) eastern Montana veterans' home;

22 (e) Montana mental health nursing care center;

23 (f) Eastmont human services center; and

24 (g) Montana chemical dependency treatment center.

25 (2) ~~This section part does not apply to the~~ THE eastern Montana veterans' home MAY ASSESS
26 CHARGES ON EITHER A PER DIEM AND ANCILLARY CHARGE BASIS OR AN ALL-INCLUSIVE RATE BASIS
27 if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

28 (3) ~~This section does not apply to residents of the~~ The Montana state hospital or to and the
29 Montana mental health nursing center to the extent that either of these institutions assesses and collects
30 charges through may determine the cost of care using an all-inclusive rate rather than or per diem and

1 ancillary charges if the department contracts with a private entity to operate a mental health managed care
2 program."

3

4 **Section 3.** Section 53-1-403, MCA, is amended to read:

5 "53-1-403. **Rules.** In addition to the specific provisions of this part ~~which that~~ require the
6 department to ~~make~~ adopt rules, the department may ~~make~~ adopt rules ~~for the administration of to~~
7 implement this part. All rules ~~made~~ adopted by the department under the provisions of this part ~~shall~~ must
8 be ~~made~~ adopted pursuant to the provisions of the Montana Administrative Procedure Act."

9

10 **Section 4.** Section 53-1-404, MCA, is amended to read:

11 "53-1-404. ~~When Department to compute per diem to be computed~~ charge. The per diem ~~shall~~
12 charge for the fiscal year must be computed on July 1 of each year by the department. If the budgeted
13 costs of an institution change substantially within the fiscal year, the per diem charge may be adjusted to
14 compensate for those changes."

15

16 **Section 5.** Section 53-1-405, MCA, is amended to read:

17 "53-1-405. ~~Monthly assessment of charges payment amount.~~ (1) A resident and a financially
18 responsible person are liable for the resident's cost of care in an amount that the department determines
19 that the resident or financially responsible person is able to pay. The department shall ~~asses~~ assess ~~monthly~~
20 against each resident, financially responsible person, or applicable third party resource the full per diem
21 charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a
22 proportionate share of the ancillary charge, or no ancillary charge determine ability to pay based upon
23 financial information ~~given to~~ and documentation obtained by the department ~~during its~~ through an
24 investigation conducted ~~according to the rules of the department as provided in 53-1-406.~~

25 (2) ~~An assessment made by the department under this section shall be based on the resident's or~~
26 ~~financially responsible person's ability to pay.~~ The department shall ~~prescribe~~ adopt rules ~~which that~~
27 establish criteria and ~~a procedure~~ procedures for determining ability to pay. The criteria established by rules
28 adopted under this section must address factors relevant to the person's ability to pay, including but not
29 limited to:

30 (a) the amount of the resident's or financially responsible person's income, including the anticipated

1 receipt of retroactive benefits, such as veteran's benefits or social security benefits;

2 (b) the amount of the resident's or financially responsible person's assets, including the availability
3 of assets that are liquid or that are able to be readily converted to cash;

4 (c) the amount of the resident's or financially responsible person's fixed expenses for reasonable
5 and necessary housing, utilities, transportation, medical care, food, and clothing;

6 (d) the amount of the resident's or financially responsible person's taxes and other mandatory
7 payments, such as social security withholdings, insurance, child support, restitution, and court-ordered
8 payments;

9 (e) the number of persons dependent upon the resident or financially responsible person for
10 support;

11 (f) the amount of the resident's or financially responsible person's discretionary income;

12 (g) the resident's personal needs requirements while in the institution; and

13 (h) the extent to which requirement of a particular monthly payment or any monthly payment
14 would impose an undue financial burden on the resident or financially responsible person.

15 (3) The department may determine ability to pay and assess charges up to the full cost of care but
16 may require monthly payments in a lesser amount based upon:

17 (a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds,
18 certificates of deposit, or other similar assets;

19 (b) real property of the resident or ~~financially responsible person~~ THE RESIDENT'S SPOUSE if:

20 (i) the property has been listed or advertised for sale, UNLESS THE SALE PROCEEDS ARE OR WILL
21 BE USED TO PURCHASE A HOME WITHIN 18 MONTHS OR ARE USED FOR PRIMARY RESIDENCE LIVING
22 EXPENSES; or

23 (ii) the property is not occupied as the home of the resident or ~~financially responsible person~~ or as
24 the home of a spouse, dependant child, or parent of a resident or financially responsible person, THE
25 RESIDENT'S SPOUSE, OR A DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S
26 SPOUSE and if there is no reasonable expectation that the resident, THE RESIDENT'S SPOUSE, OR A
27 DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S SPOUSE will return to occupy
28 the property as a home; or

29 (c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security
30 benefits.

1 (4) If the department has determined an ability to pay and has assessed charges but has required
2 monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all
3 or a part of the accumulated difference between the assessed charges and the minimum payment amount:

4 (a) upon sale or liquidation of the assets or real property;

5 (b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security
6 benefits;

7 (c) upon determination of a current ability to pay; or

8 (d) from the resident's or financially responsible person's estate as provided in 53-1-412.

9 (5) The department may not ~~make an assessment which~~ require payment of a monthly amount that
10 would place an undue financial burden on the resident or the financially responsible person.

11 (6) The department shall refund to the resident or financially responsible person any payment made
12 to the department for any month to the extent that the total payments received from the resident,
13 financially responsible person, and third party exceed the resident's cost of care for that month.

14 (7) The fact that a managed care organization contracting with the department to administer a
15 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
16 respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's
17 obligation to pay for the cost of care as provided in this part.

18 (8) The department shall provide a written notice and an opportunity for a hearing regarding a
19 department determination of ability to pay to any resident or financially responsible person who is
20 determined able to pay.

21 (9) In addition to providing the notice required by subsection (8), the department shall bill the
22 resident or financially responsible person monthly for the amount determined in accordance with this
23 section. The bill must state the amount due for the current month, the amount of any payments received
24 during the billing cycle, and the total amount of unpaid costs of care that the department has determined
25 the resident or financially responsible person is able to pay. The bill need not state the current or accrued
26 full cost of care that is or would be payable by a third party.

27 (10) This section may not be construed to reduce the liability of a third party for the resident's full
28 cost of care as provided in this part."

29
30 **Section 6.** Section 53-1-406, MCA, is amended to read:

1 **"53-1-406. Investigation of ability to pay.** (1) Before determining an ability to pay under 53-1-405,
 2 the department shall investigate each resident's and each financially responsible person's ability to pay.
 3 For purposes of the investigation, the determination of ability to pay, or any later review or redetermination,
 4 the department may require the resident or financially responsible person to complete, sign, and submit
 5 financial information and documentation, including financial statements on a form supplied by the
 6 department.

7 (2) Each agency of the state shall ~~give~~ provide to the department all reasonable assistance ~~to the~~
 8 ~~department in obtaining~~ and all requested information and documents necessary for the ~~proper~~ financial
 9 investigation of residents or financially responsible persons. THE DEPARTMENT OF REVENUE MAY NOT
 10 PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE CONSENT
 11 OF THE TAXPAYER.

12 ~~(2)(3)~~ (3) Upon request of the department, the resident or financially responsible person shall make
 13 available to the department and shall cooperate with the department in obtaining any financial information
 14 ~~which~~ and documentation that the department considers essential for the purpose of determining ability to
 15 pay and ~~which that~~, under federal law, the department is not prohibited from seeking or obtaining from the
 16 resident or financially responsible person. ~~Willful failure~~ The information and documentation that the
 17 department is entitled to receive includes but is not limited to:

18 (a) income statements and verification;

19 (b) liability statements and verification;

20 (c) tax returns and related forms, documents, and records, BUT THE DEPARTMENT OF REVENUE
 21 MAY NOT PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE
 22 CONSENT OF THE TAXPAYER;

23 (d) asset statements and descriptions, including valuation appraisals;

24 (e) records of a bank or other financial institution, including account balances, loan statements,
 25 account ownership information, and transaction records;

26 (f) expense statements and verification;

27 (g) financial statements, including existing financial statements and financial statements on forms
 28 provided by the department;

29 (h) releases authorizing the department to obtain information or documents directly from an
 30 employer, creditor, federal agency, financial institution, or other person or entity; and

1 (i) any other information or documentation necessary to the determination.

2 (4) If a resident or financially responsible person fails to provide or cooperate in obtaining the
 3 financial information or documentation requested by the department may result in, the department may
 4 make a determination of ability to pay based upon any information or documentation available to the
 5 department, including a determination of ability to pay up to the full per diem and full ancillary charges cost
 6 of care. The determination is effective until such time as the requested information and documentation is
 7 are provided and the department makes a new determination of ability to pay, taking into consideration the
 8 additional information and documentation.

9 ~~(3) (a) A representative of the department authorized by the director may administer oaths, take~~
 10 ~~testimony, and subpoena and compel the attendance of witnesses and the production of books, papers,~~
 11 ~~records, and documents in connection with the duty of securing payments for care as provided by this part.~~

12 ~~(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a~~
 13 ~~district court of the state, may be ordered by the judge to appear and show cause for his disobedience of~~
 14 ~~the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the~~
 15 ~~subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena~~
 16 ~~when so ordered by the judge may be punished for contempt of court on application of the department to~~
 17 ~~the district court.~~

18 (5) In a hearing under 53-1-407, if a hearings examiner determines that information or
 19 documentation is relevant and admissible and orders the resident or financially responsible person to
 20 produce it and if the resident or financially responsible person fails or refuses to produce that information
 21 or documentation, a determination of ability to pay the full cost of care may be affirmed or payment of the
 22 full cost of care ordered, regardless of other information presented."

23

24 **Section 7.** Section 53-1-407, MCA, is amended to read:

25 **"53-1-407. Appeal of determination of ability to pay.** ~~If a~~ A resident or financially responsible
 26 ~~person disagrees with the final determination of the department as to his~~ aggrieved by a determination of
 27 ~~ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date~~
 28 ~~of the department's determination in any court of record in Montana having jurisdiction of the resident or~~
 29 ~~financially responsible person liable for payment~~ under 53-1-405 may request a hearing pursuant to Title
 30 2, chapter 4, part 6."

1 **Section 8.** Section 53-1-408, MCA, is amended to read:

2 "**53-1-408. Periodic review by department of ability to pay.** ~~(1) At appropriate intervals, the~~ The
3 department shall review at least annually each determination of ability to pay, and, if there has been a
4 significant change in a resident's or financially responsible person's ability to pay, the department shall
5 make a new determination. ~~However, a~~

6 (2) In addition to the annual review required by subsection (1), the department shall review a
7 determination of ability to pay upon the request of a resident or financially responsible person if the person
8 provides the department with documentation of a changed circumstance that would substantially affect the
9 amount determined under 53-1-405.

10 (3) A new determination of ability to pay may not be applied retroactively unless:

11 (a) the new determination results in a monthly ~~assessment which~~ payment amount that is less than
12 the previous monthly ~~assessment~~ payment amount; or ~~unless~~

13 (b) the resident or financially responsible person has ~~materially~~ misrepresented or failed to provide
14 any financial information or documentation that the person was obligated to provide under 53-1-406 and
15 unless the resident or financially responsible person would have been required to pay a higher monthly
16 amount based upon consideration of the complete and correct information and documentation.

17 (4) The department ~~shall make~~ may adopt rules to implement the provisions of this section,
18 including but not limited to rules for credit or refund of any overpayment resulting from an assessment
19 retroactively reduced because of a new determination of ability to pay."

20
21 **Section 9.** Section 53-1-409, MCA, is amended to read:

22 "**53-1-409. Liability Limitations on liability of resident or financially responsible person for assessed**
23 **charges cost of care.** (1) The resident or financially responsible person is liable only for the ~~per diem and~~
24 ~~ancillary charges~~ cost of care that the department has ~~assessed~~ determined that the person is able to pay
25 and for which the department has billed the resident or financially responsible person. If ~~amounts assessed~~
26 ~~and billed are~~ the amount payable is retroactively reduced because of a new determination of ability to pay,
27 the resident or financially responsible person ~~is liable only for~~ shall pay only the reduced amount for the
28 period of time covered by the retroactive reduction.

29 (2) The natural or adoptive parents of a long-term ~~residents are liable only for the charges made~~
30 ~~by the department~~ resident may not be required to pay for the resident's cost of care in an amount ~~not to~~

1 ~~exceed~~ exceeding the cost of caring for a normal child at home as determined ~~from standard sources and~~
 2 updated annually by the department based upon the annual cost of raising a child, as estimated by the
 3 United States department of agriculture.

4 (3) ~~Natural~~ The natural or adoptive parents of a long-term resident ~~are not liable for any charges~~
 5 ~~made by the department for care of a long-term resident incurred or accrued subsequent to the resident~~
 6 ~~attaining~~ may not be required to pay for the resident's cost of care for periods after the resident attains 18
 7 years of age.

8 (4) (a) A resident or financially responsible person is not financially liable for care provided to a
 9 resident under any provision of a criminal statute.

10 (b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical
 11 dependency treatment center.

12 (5) This section may not be construed to reduce the liability of a third party for a resident's full cost
 13 of care as provided in this part."

14

15 **Section 10.** Section 53-1-410, MCA, is amended to read:

16 **"53-1-410. Nonpayment not grounds for ~~release~~ discharge.** A resident of an institution listed in
 17 53-1-402 may not be ~~released~~ discharged by reason of the nonpayment of the ~~per diem or the ancillary~~
 18 ~~charge~~ resident's cost of care unless, by certification of a physician consulted by the superintendent of the
 19 institution, the ~~release~~ discharge is medically advisable."

20

21 **Section 11.** Section 53-1-411, MCA, is amended to read:

22 **"53-1-411. Collections ~~by department of administration from residents and financially responsible~~**
 23 **persons.** (1) If a resident or financially responsible person ~~liable for payment of per diem and ancillary~~
 24 charges due under this part refuses or fails to ~~make the payment, it is collectible~~ pay the amount required
 25 under this part, any amount remaining unpaid 30 days after the department mails a written demand for
 26 payment may be collected:

27 (a) by the department in any manner allowed by law for the collection of debts; or

28 (b) by the department of administration in the manner set forth in Title 17, chapter 4, for the
 29 collection of debts owing to the state or by a civil suit brought by the department of administration in the
 30 name of the state.

1 (2) A resident's death or discharge from an institution does not reduce or eliminate the obligation
2 of any person to pay an amount required under this part."

3
4 **Section 12.** Section 53-1-412, MCA, is amended to read:

5 **"53-1-412. Collections from estates.** (1) The state department has a claim against the estate of
6 a resident or and against the estate of a financially responsible person for an amount due to the state at
7 the death of the resident or financially responsible person. The attorney general shall collect any claim
8 which the state may have against the estate. However, the amounts that the department determined that
9 the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually
10 paid by the resident, a financially responsible person, or a third party.

11 (2) The fact that a managed care organization contracting with the department to administer a
12 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
13 respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of
14 care as provided in this part.

15 (3) Except as provided in subsection (4), the department's claim under this section is enforceable
16 against an estate after the death of a resident or financially responsible person. The department's claim
17 is timely if presented within the time specified in the published notice to creditors in the probate proceeding.

18 (4) The department's claim under subsection (1) may be enforced only to the extent that
19 enforcement does not deprive a surviving spouse, or dependent child, or parent of the resident or financially
20 responsible person of:

21 (1)(a) an amount necessary for reasonable living expenses or educational expenses; or

22 (2)(b) real estate while it is occupied as a home by the surviving spouse, or dependent child, or
23 parent of the resident or financially responsible person."

24
25 **Section 13.** Section 53-1-413, MCA, is amended to read:

26 **"53-1-413. Deposit of payments and collections.** (1) Except as provided in 90-7-220, 90-7-221,
27 and ~~subsection (2) of this section,~~ the department shall deposit payments and collections of per diem and
28 ancillary charges for a resident's cost of care in the state treasury to the credit of the general fund.

29 (2) Payments from and collections for services provided to residents of the Montana veterans'
30 home must be deposited in the federal special revenue fund account for the benefit of the home, and

1 ~~payments from.~~ Payments and collections for services provided to residents of the Montana chemical
 2 dependency treatment center program must be deposited ~~to an alcohol~~ in the state special revenue account
 3 for the facility.

4 (3) ~~Payments~~ Subject to 90-7-221, payments from a managed care ~~contractor, provided for in~~
 5 ~~53-6-116,~~ organization that is contracting with the department to administer a mental health managed care
 6 program for services provided by the Montana state hospital and the Montana mental health nursing care
 7 center must be deposited in the state special revenue ~~fund~~ account, subject to appropriation by the
 8 legislature for the benefit of those institutions."
 9

10 NEW SECTION. Section 14. Automatic assignment of resident's resources from third party. (1)
 11 Upon the provision of care to a resident, the resident is considered to have assigned to the department all
 12 third-party payments, benefits, and resources applicable to the resident's care.

13 (2) The department is entitled to all third-party payments, benefits, and resources assigned under
 14 this section upon demand and the submission of supporting documentation from the department to the third
 15 party. The department is entitled to collect from the third party the full amount payable by the third party,
 16 up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially
 17 responsible person has been determined able to pay under 53-1-405.

18 (3) The fact that a managed care organization contracting with the department to administer a
 19 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
 20 respect to the resident does not reduce or otherwise affect the third party's obligation ~~or~~ TO pay for the
 21 cost of care as provided in this part.

22 (4) The department may assign its rights under this section to a managed care organization
 23 contracting with the department to administer a mental health managed care program.

24 (5) If a third party that has been notified of the department's or managed care organization's claim
 25 under this section pays benefits, resources, or other amounts to a resident, financially responsible person,
 26 or another person or entity without satisfying the department's or managed care organization's claim, the
 27 third party is liable to the department or to the managed care organization for the amount that the
 28 department or managed care organization was entitled to receive under this part.

29

30 NEW SECTION. Section 15. Codification instruction. [Section 14] is intended to be codified as

1 an integral part of Title 53, chapter 1, part 4, and the provisions of Title 53, chapter 1, part 4, apply to
2 [section 14].

3
4 NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
6 applications, the part remains in effect in all valid applications that are severable from the invalid
7 applications.

8
9 NEW SECTION. Section 17. Applicability. (1) Except as provided in ~~subsection~~ SUBSECTIONS (2)
10 AND (3), [this act] applies to care provided on or after July 1, 1997.

11 (2) [Section 11] applies to proceedings begun on or after July 1, 1997.

12 (3) [SECTION 2] APPLIES TO CARE PROVIDED TO A RESIDENT, AS DEFINED IN 53-1-401, ON OR
13 AFTER [THE EFFECTIVE DATE OF SECTION 2].

14
15 NEW SECTION. Section 18. Effective date DATES. ~~This (1) EXCEPT AS PROVIDED IN~~
16 SUBSECTION (2), [THIS act] is effective July 1, 1997.

17 (2) [SECTION 2 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

18 -END-

SENATE BILL NO. 114

INTRODUCED BY WATERMAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY; REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING REGARDING A DETERMINATION OF ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED FINANCIAL INFORMATION; SPECIFYING LIMITS ON LIABILITY FOR COSTS OF CARE; SPECIFYING COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE; SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406, 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE DATES AND AN APPLICABILITY DATE DATES."

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

Section 1. Section 53-1-401, MCA, is amended to read:

"53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

(2) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:



- 1 (a) physicians' services;
- 2 (b) x-ray and laboratory services;
- 3 (c) dental services;
- 4 (d) speech-language pathology and audiology services;
- 5 (e) occupational and physical therapy;
- 6 (f) medical supplies;
- 7 (g) prescribed drugs; and
- 8 (h) specialized medical equipment.

9 (3) "Care" means the care, treatment, support, maintenance, and other services rendered by the
10 department to a resident.

11 (4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary
12 charges for a resident's care that are determined as provided in this part.

13 ~~(4)(5)~~ "Department" means the department of public health and human services provided for in
14 2-15-2201.

15 ~~(5)(6)~~ "Financially responsible person" means a spouse of a resident, the natural or adoptive
16 parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's
17 or conservator's responsibility for the financial affairs of the person who is a resident under applicable
18 Montana law establishing the duties and limitations of guardianships or conservatorships.

19 ~~(6)(7)~~ "Full-time equivalent resident load" means the total daily resident count for the fiscal year
20 divided by the number of days in the year.

21 (8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through
22 the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.

23 ~~(7)(9)~~ "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous
24 period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit
25 may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term
26 resident.

27 ~~(8)(10)~~ ~~"Per diem"~~ "Per diem charge" means the gross daily budgeted cost of operating an
28 institution or an individual unit of an institution for the state fiscal year (including ~~certain~~ but not limited to
29 contracted medical services, depreciation, and associated department costs but excluding the cost of
30 educational programs, ~~federal grants~~, ancillary charges, and costs not directly identified with patient care)

1 divided by the full-time equivalent resident load for the previous state fiscal year.

2 ~~(9)(11)~~ "Resident" means any person who is receiving care from or who is a resident of an
3 institution listed in 53-1-402.

4 ~~(10)(12)~~ (a) ~~"Third party resource~~ Third party" means any third-party individual or entity that is or
5 may be liable to pay all or part of the charges for a resident's cost of care, including but is not limited to
6 applicable medicare, medicaid, and personal insurance or other similar health care benefits.

7 (b) Third party does not include:

8 (i) a managed care organization administering a mental health managed care program under
9 contract with the department; or

10 (ii) a financially responsible person."

11

12 **Section 2.** Section 53-1-402, MCA, is amended to read:

13 **"53-1-402. Residents subject to per diem and ancillary charges and financially responsible persons**
14 **liable for cost of care.** (1) ~~The department shall assess and collect~~ A resident and a financially responsible
15 person are liable to the department for the resident's cost of care as provided in this part. The cost of care
16 includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents
17 in the following institutions:

18 (a) Montana state hospital;

19 (b) Montana developmental center;

20 (c) Montana veterans' home;

21 (d) eastern Montana veterans' home;

22 (e) Montana mental health nursing care center;

23 (f) Eastmont human services center; and

24 (g) Montana chemical dependency treatment center.

25 (2) ~~This section part does not apply to the~~ THE eastern Montana veterans' home MAY ASSESS
26 CHARGES ON EITHER A PER DIEM AND ANCILLARY CHARGE BASIS OR AN ALL-INCLUSIVE RATE BASIS
27 if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

28 (3) ~~This section does not apply to residents of the~~ The Montana state hospital ~~or to~~ and the
29 Montana mental health nursing center ~~to the extent that either of these institutions assesses and collects~~
30 charges through may determine the cost of care using an all-inclusive rate ~~rather than~~ or per diem and

1 ancillary charges if the department contracts with a private entity to operate a mental health managed care
 2 program."

3

4 **Section 3.** Section 53-1-403, MCA, is amended to read:

5 "53-1-403. **Rules.** In addition to the specific provisions of this part ~~which that~~ require the
 6 department to ~~make~~ adopt rules, the department may ~~make~~ adopt rules ~~for the administration of to~~
 7 implement this part. All rules ~~made~~ adopted by the department under the provisions of this part ~~shall~~ must
 8 be ~~made~~ adopted pursuant to the provisions of the Montana Administrative Procedure Act."

9

10 **Section 4.** Section 53-1-404, MCA, is amended to read:

11 "53-1-404. ~~When~~ Department to compute per diem to be computed charge. The per diem ~~shall~~
 12 charge for the fiscal year must be computed on July 1 of each year by the department. If the budgeted
 13 costs of an institution change substantially within the fiscal year, the per diem charge may be adjusted to
 14 compensate for those changes."

15

16 **Section 5.** Section 53-1-405, MCA, is amended to read:

17 "53-1-405. ~~Monthly assessment of charges payment amount.~~ (1) A resident and a financially
 18 responsible person are liable for the resident's cost of care in an amount that the department determines
 19 that the resident or financially responsible person is able to pay. The department shall ~~access~~ assess monthly
 20 ~~against each resident, financially responsible person, or applicable third party resource the full per diem~~
 21 ~~charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a~~
 22 ~~proportionate share of the ancillary charge, or no ancillary charge~~ determine ability to pay based upon
 23 financial information ~~given to~~ and documentation obtained by the department ~~during its~~ through an
 24 investigation conducted ~~according to the rules of the department~~ as provided in 53-1-406.

25 (2) ~~An assessment made by the department under this section shall be based on the resident's or~~
 26 ~~financially responsible person's ability to pay.~~ The department shall ~~prescribe~~ adopt rules ~~which that~~
 27 establish criteria and ~~a procedure~~ procedures for determining ability to pay. The criteria established by rules
 28 adopted under this section must address factors relevant to the person's ability to pay, including but not
 29 limited to:

30 (a) the amount of the resident's or financially responsible person's income, including the anticipated

1 receipt of retroactive benefits, such as veteran's benefits or social security benefits;

2 (b) the amount of the resident's or financially responsible person's assets, including the availability
3 of assets that are liquid or that are able to be readily converted to cash;

4 (c) the amount of the resident's or financially responsible person's fixed expenses for reasonable
5 and necessary housing, utilities, transportation, medical care, food, and clothing;

6 (d) the amount of the resident's or financially responsible person's taxes and other mandatory
7 payments, such as social security withholdings, insurance, child support, restitution, and court-ordered
8 payments;

9 (e) the number of persons dependent upon the resident or financially responsible person for
10 support;

11 (f) the amount of the resident's or financially responsible person's discretionary income;

12 (g) the resident's personal needs requirements while in the institution; and

13 (h) the extent to which requirement of a particular monthly payment or any monthly payment
14 would impose an undue financial burden on the resident or financially responsible person.

15 (3) The department may determine ability to pay and assess charges up to the full cost of care but
16 may require monthly payments in a lesser amount based upon:

17 (a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds,
18 certificates of deposit, or other similar assets;

19 (b) real property of the resident or ~~financially responsible person~~ THE RESIDENT'S SPOUSE if:

20 (i) the property has been listed or advertised for sale, UNLESS THE SALE PROCEEDS ARE OR WILL
21 BE USED TO PURCHASE A HOME WITHIN 18 MONTHS OR ARE USED FOR PRIMARY RESIDENCE LIVING
22 EXPENSES; or

23 (ii) the property is not occupied as the home of the resident or ~~financially responsible person~~ or as
24 the home of a spouse, dependent child, or parent of a resident or financially responsible person, THE
25 RESIDENT'S SPOUSE, OR A DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S
26 SPOUSE and if there is no reasonable expectation that the resident, THE RESIDENT'S SPOUSE, OR A
27 DEPENDENT CHILD OR PARENT OF THE RESIDENT OR THE RESIDENT'S SPOUSE will return to occupy
28 the property as a home; or

29 (c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security
30 benefits.

1 (4) If the department has determined an ability to pay and has assessed charges but has required
2 monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all
3 or a part of the accumulated difference between the assessed charges and the minimum payment amount:

4 (a) upon sale or liquidation of the assets or real property;

5 (b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security
6 benefits;

7 (c) upon determination of a current ability to pay; or

8 (d) from the resident's or financially responsible person's estate as provided in 53-1-412.

9 (5) The department may not ~~make an assessment which~~ require payment of a monthly amount that
10 would place an undue financial burden on the resident or ~~the~~ financially responsible person.

11 (6) The department shall refund to the resident or financially responsible person any payment made
12 to the department for any month to the extent that the total payments received from the resident,
13 financially responsible person, and third party exceed the resident's cost of care for that month.

14 (7) The fact that a managed care organization contracting with the department to administer a
15 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
16 respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's
17 obligation to pay for the cost of care as provided in this part.

18 (8) The department shall provide a written notice and an opportunity for a hearing regarding a
19 department determination of ability to pay to any resident or financially responsible person who is
20 determined able to pay.

21 (9) In addition to providing the notice required by subsection (8), the department shall bill the
22 resident or financially responsible person monthly for the amount determined in accordance with this
23 section. The bill must state the amount due for the current month, the amount of any payments received
24 during the billing cycle, and the total amount of unpaid costs of care that the department has determined
25 the resident or financially responsible person is able to pay. The bill need not state the current or accrued
26 full cost of care that is or would be payable by a third party.

27 (10) This section may not be construed to reduce the liability of a third party for the resident's full
28 cost of care as provided in this part."

29
30 **Section 6.** Section 53-1-406, MCA, is amended to read:

1 "53-1-406. **Investigation of ability to pay.** (1) Before determining an ability to pay under 53-1-405,
 2 the department shall investigate each resident's and each financially responsible person's ability to pay.
 3 For purposes of the investigation, the determination of ability to pay, or any later review or redetermination,
 4 the department may require the resident or financially responsible person to complete, sign, and submit
 5 financial information and documentation, including financial statements on a form supplied by the
 6 department.

7 (2) Each agency of the state shall ~~give~~ provide to the department all reasonable assistance ~~to the~~
 8 ~~department in obtaining~~ and all requested information and documents necessary for the ~~proper~~ financial
 9 investigation of residents or financially responsible persons. THE DEPARTMENT OF REVENUE MAY NOT
 10 PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE CONSENT
 11 OF THE TAXPAYER.

12 ~~(2)(3)~~ Upon request of the department, the resident or financially responsible person shall make
 13 available to the department and shall cooperate with the department in obtaining any financial information
 14 ~~which~~ and documentation that the department considers essential for the purpose of determining ability to
 15 pay and ~~which that~~, under federal law, the department is not prohibited from seeking or obtaining from the
 16 resident or financially responsible person. ~~Willful failure~~ The information and documentation that the
 17 department is entitled to receive includes but is not limited to:

18 (a) income statements and verification;

19 (b) liability statements and verification;

20 (c) tax returns and related forms, documents, and records, BUT THE DEPARTMENT OF REVENUE
 21 MAY NOT PROVIDE CONFIDENTIAL TAX RETURN INFORMATION TO THE DEPARTMENT WITHOUT THE
 22 CONSENT OF THE TAXPAYER;

23 (d) asset statements and descriptions, including valuation appraisals;

24 (e) records of a bank or other financial institution, including account balances, loan statements,
 25 account ownership information, and transaction records;

26 (f) expense statements and verification;

27 (g) financial statements, including existing financial statements and financial statements on forms
 28 provided by the department;

29 (h) releases authorizing the department to obtain information or documents directly from an
 30 employer, creditor, federal agency, financial institution, or other person or entity; and

1 (i) any other information or documentation necessary to the determination.

2 (4) If a resident or financially responsible person fails to provide or cooperate in obtaining the
 3 financial information or documentation requested by the department may result in, the department may
 4 make a determination of ability to pay based upon any information or documentation available to the
 5 department, including a determination of ability to pay up to the full per diem and full ancillary charges cost
 6 of care. The determination is effective until such time as the requested information and documentation is
 7 are provided and the department makes a new determination of ability to pay, taking into consideration the
 8 additional information and documentation.

9 ~~(3) (a) A representative of the department authorized by the director may administer oaths, take~~
 10 ~~testimony, and subpoena and compel the attendance of witnesses and the production of books, papers,~~
 11 ~~records, and documents in connection with the duty of securing payments for care as provided by this part.~~

12 ~~(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a~~
 13 ~~district court of the state, may be ordered by the judge to appear and show cause for his disobedience of~~
 14 ~~the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the~~
 15 ~~subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena~~
 16 ~~when so ordered by the judge may be punished for contempt of court on application of the department to~~
 17 ~~the district court.~~

18 (5) In a hearing under 53-1-407, if a hearings examiner determines that information or
 19 documentation is relevant and admissible and orders the resident or financially responsible person to
 20 produce it and if the resident or financially responsible person fails or refuses to produce that information
 21 or documentation, a determination of ability to pay the full cost of care may be affirmed or payment of the
 22 full cost of care ordered, regardless of other information presented."

23

24 **Section 7.** Section 53-1-407, MCA, is amended to read:

25 **"53-1-407. Appeal of determination of ability to pay.** ~~If a~~ **A** resident or financially responsible
 26 person ~~disagrees with the final determination of the department as to his~~ aggrieved by a determination of
 27 ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date
 28 of the department's determination in any court of record in Montana having jurisdiction of the resident or
 29 financially responsible person liable for payment under 53-1-405 may request a hearing pursuant to Title
 30 2, chapter 4, part 6."

1 Section 8. Section 53-1-408, MCA, is amended to read:

2 "53-1-408. Periodic review by department of ability to pay. ~~(1) At appropriate intervals, the~~ The
3 department shall review at least annually each determination of ability to pay, and, if there has been a
4 significant change in a resident's or financially responsible person's ability to pay, the department shall
5 make a new determination. ~~However, a~~

6 (2) In addition to the annual review required by subsection (1), the department shall review a
7 determination of ability to pay upon the request of a resident or financially responsible person if the person
8 provides the department with documentation of a changed circumstance that would substantially affect the
9 amount determined under 53-1-405.

10 (3) A new determination of ability to pay may not be applied retroactively unless:

11 (a) the new determination results in a monthly ~~assessment which~~ payment amount that is less than

12 the previous monthly ~~assessment~~ payment amount; or ~~unless~~
13 (b) the resident or financially responsible person has ~~materially~~ misrepresented or failed to provide
14 any financial information or documentation that the person was obligated to provide under 53-1-406 and
15 unless the resident or financially responsible person would have been required to pay a higher monthly
16 amount based upon consideration of the complete and correct information and documentation.

17 (4) The department ~~shall make~~ may adopt rules to implement the provisions of this section,
18 including but not limited to rules for credit or refund of any overpayment resulting from an assessment
19 retroactively reduced because of a new determination of ability to pay."

20
21 Section 9. Section 53-1-409, MCA, is amended to read:

22 "53-1-409. Liability Limitations on liability of resident or financially responsible person for assessed
23 charges cost of care. (1) The resident or financially responsible person is liable only for the ~~per diem and~~
24 ~~ancillary charges~~ cost of care that the department has ~~assessed~~ determined that the person is able to pay
25 and for which the department has billed the resident or financially responsible person. If ~~amounts assessed~~
26 and billed are the amount payable is retroactively reduced because of a new determination of ability to pay,
27 the resident or financially responsible person ~~is liable only for~~ shall pay only the reduced amount for the
28 period of time covered by the retroactive reduction.

29 (2) The natural or adoptive parents of a long-term ~~residents are liable only for the charges made~~
30 by the department resident may not be required to pay for the resident's cost of care in an amount ~~not to~~

1 ~~exceed~~ exceeding the cost of caring for a normal child at home as determined ~~from standard sources and~~
 2 updated annually by the department based upon the annual cost of raising a child, as estimated by the
 3 United States department of agriculture.

4 (3) ~~Natural~~ The natural or adoptive parents of a long-term resident ~~are not liable for any charges~~
 5 ~~made by the department for care of a long-term resident incurred or accrued subsequent to the resident~~
 6 attaining may not be required to pay for the resident's cost of care for periods after the resident attains 18
 7 years of age.

8 (4) (a) A resident or financially responsible person is not financially liable for care provided to a
 9 resident under any provision of a criminal statute.

10 (b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical
 11 dependency treatment center.

12 (5) This section may not be construed to reduce the liability of a third party for a resident's full cost
 13 of care as provided in this part."

14
 15 **Section 10.** Section 53-1-410, MCA, is amended to read:

16 "**53-1-410. Nonpayment not grounds for ~~release~~ discharge.** A resident of an institution listed in
 17 53-1-402 may not be ~~released~~ discharged by reason of the nonpayment of the ~~per diem or the ancillary~~
 18 ~~charge~~ resident's cost of care unless, by certification of a physician consulted by the superintendent of the
 19 institution, the ~~release~~ discharge is medically advisable."

20
 21 **Section 11.** Section 53-1-411, MCA, is amended to read:

22 "**53-1-411. Collections ~~by department of administration from residents and financially responsible~~**
 23 **persons.** (1) If a resident or financially responsible person ~~liable for payment of per diem and ancillary~~
 24 ~~charges due under this part~~ refuses or fails to ~~make the payment, it is collectible~~ pay the amount required
 25 under this part, any amount remaining unpaid 30 days after the department mails a written demand for
 26 payment may be collected:

27 (a) by the department in any manner allowed by law for the collection of debts; or

28 (b) by the department of administration in the manner set forth in Title 17, chapter 4, for the
 29 collection of debts owing to the state or by a civil suit brought by the department of administration in the
 30 name of the state.

1 (2) A resident's death or discharge from an institution does not reduce or eliminate the obligation
2 of any person to pay an amount required under this part."

3

4 **Section 12.** Section 53-1-412, MCA, is amended to read:

5 **"53-1-412. Collections from estates.** (1) The ~~state~~ department has a claim against the estate of
6 a resident ~~or~~ and against the estate of a financially responsible person for ~~an amount due to the state at~~
7 ~~the death of the resident or financially responsible person. The attorney general shall collect any claim~~
8 ~~which the state may have against the estate. However,~~ the amounts that the department determined that
9 the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually
10 paid by the resident, a financially responsible person, or a third party.

11 (2) The fact that a managed care organization contracting with the department to administer a
12 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
13 respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of
14 care as provided in this part.

15 (3) Except as provided in subsection (4), the department's claim under this section is enforceable
16 against an estate after the death of a resident or financially responsible person. The department's claim
17 is timely if presented within the time specified in the published notice to creditors in the probate proceeding.

18 (4) The department's claim under subsection (1) may be enforced only to the extent that
19 enforcement does not deprive a surviving spouse, ~~or dependent~~ child, or parent of the resident or financially
20 responsible person of:

- 21 ~~(1)(a)~~ (a) an amount necessary for reasonable living expenses or educational expenses; or
- 22 ~~(2)(b)~~ (b) real estate while it is occupied as a home by the surviving spouse, ~~or dependent~~ child, or
- 23 parent of the resident or financially responsible person."

24

25 **Section 13.** Section 53-1-413, MCA, is amended to read:

26 **"53-1-413. Deposit of payments and collections.** (1) Except as provided in 90-7-220, 90-7-221,
27 and ~~subsection (2) of this section,~~ the department shall deposit payments and collections of ~~per diem and~~
28 ~~ancillary~~ charges for a resident's cost of care in the state treasury to the credit of the general fund.

29 (2) Payments ~~from~~ and collections for services provided to residents of the Montana veterans'
30 home must be deposited in the ~~federal~~ special revenue ~~fund~~ account for the benefit of the home, ~~and~~

1 ~~payments from.~~ Payments and collections for services provided to residents of the Montana chemical
 2 dependency treatment center program must be deposited ~~to an alcohol~~ in the state special revenue account
 3 for the facility.

4 (3) ~~Payments~~ Subject to 90-7-221, payments from a managed care ~~contractor, provided for in~~
 5 ~~53-6-116,~~ organization that is contracting with the department to administer a mental health managed care
 6 program for services provided by the Montana state hospital and the Montana mental health nursing care
 7 center must be deposited in the state special revenue ~~fund~~ account, subject to appropriation by the
 8 legislature for the benefit of those institutions."

9
 10 **NEW SECTION. Section 14. Automatic assignment of resident's resources from third party.** (1)

11 Upon the provision of care to a resident, the resident is considered to have assigned to the department all
 12 third-party payments, benefits, and resources applicable to the resident's care.

13 (2) The department is entitled to all third-party payments, benefits, and resources assigned under
 14 this section upon demand and the submission of supporting documentation from the department to the third
 15 party. The department is entitled to collect from the third party the full amount payable by the third party,
 16 up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially
 17 responsible person has been determined able to pay under 53-1-405.

18 (3) The fact that a managed care organization contracting with the department to administer a
 19 mental health managed care program is or may be liable to pay or has paid an amount to an institution with
 20 respect to the resident does not reduce or otherwise affect the third party's obligation ~~or~~ TO pay for the
 21 cost of care as provided in this part.

22 (4) The department may assign its rights under this section to a managed care organization
 23 contracting with the department to administer a mental health managed care program.

24 (5) If a third party that has been notified of the department's or managed care organization's claim
 25 under this section pays benefits, resources, or other amounts to a resident, financially responsible person,
 26 or another person or entity without satisfying the department's or managed care organization's claim, the
 27 third party is liable to the department or to the managed care organization for the amount that the
 28 department or managed care organization was entitled to receive under this part.

29
 30 **NEW SECTION. Section 15. Codification instruction.** [Section 14] is intended to be codified as

1 an integral part of Title 53, chapter 1, part 4, and the provisions of Title 53, chapter 1, part 4, apply to
2 [section 14].

3

4 NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
6 applications, the part remains in effect in all valid applications that are severable from the invalid
7 applications.

8

9 NEW SECTION. Section 17. Applicability. (1) Except as provided in ~~subsection~~ SUBSECTIONS (2)
10 AND (3), [this act] applies to care provided on or after July 1, 1997.

11 (2) [Section 11] applies to proceedings begun on or after July 1, 1997.

12 (3) [SECTION 2] APPLIES TO CARE PROVIDED TO A RESIDENT, AS DEFINED IN 53-1-401, ON OR
13 AFTER [THE EFFECTIVE DATE OF SECTION 2].

14

15 NEW SECTION. Section 18. Effective date DATES. ~~{This (1) EXCEPT AS PROVIDED IN~~
16 SUBSECTION (2), [THIS act] is effective July 1, 1997.

17 (2) [SECTION 2 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

18

-END-