

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 1, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

Like you and members of the Legislature, I understand the vital role our ambulance service providers play in providing Montana's patients with life-saving medical care. Ambulance service organizations face unprecedented challenges with increased operating costs that have been compounded by a shortage of paramedics and emergency medical technicians, and I share your commitment to ensuring such organizations are equipped to continue serving as lifelines to care in communities across Montana.

I share the goal of maintaining and improving Montanans' access to critical life-saving services and applaud the Legislature's work to improve the financial security of ambulance providers across the state. However, House Bill 828 can be improved to ensure the intent of the legislation is achieved.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 828: "AN ACT ESTABLISHING AN AMBULANCE PROVIDER ASSESSMENT FEE; ESTABLISHING PROCEDURES FOR COLLECTING AND DISTRIBUTING THE FEE; ALLOWING AUDITING OF AMBULANCE PROVIDER REPORTS AND PAYMENTS; ALLOWING FOR PENALTIES AND INTEREST; REQUIRING REVENUES GENERATED BY THE FEE TO BE USED FOR SUPPLEMENTING AMBULANCE PROVIDER MEDICAID PAYMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE."

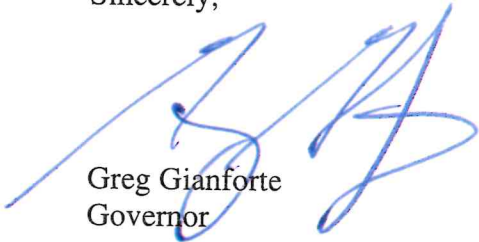
As approved by the Legislature, House Bill 828 establishes a Medicaid supplemental payment program for ambulance providers, which requires the Montana Department of Public Health and

Human Services (DPHHS) to obtain approval of a state plan amendment (SPA) from the Centers for Medicare & Medicaid Services (CMS) with sufficient time to implement the program by July 1, 2024. While I am also committed to improving access to ambulance services, the bill, as approved by the Legislature, does not provide enough time for DPHHS to gather the data and to conduct a proper analysis to determine the impact of the supplemental payment program, including the impact on ambulance service providers, and whether the program will have the impact intended by the Legislature. Such data and analyses are also needed to support the submission to, and approval by, CMS of the necessary SPA.

Therefore, I offer an amendment that will strike the implementation date in Section 16(2) of House Bill 828, which will allow DPHHS to work with relevant stakeholders to ensure their broad support, as well as obtain the necessary data to analyze the impact, of the supplemental payment program prior to seeking federal approval.

House Bill 828 can be improved to ensure the bill's intent is achieved, and I respectfully ask for your support of this amendment.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State

HOUSE BILL NO. 828

INTRODUCED BY E. BUTTREY, S. KERNS, S. GIST, R. FITZGERALD, J. KASSMIER, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN AMBULANCE PROVIDER ASSESSMENT FEE; ESTABLISHING PROCEDURES FOR COLLECTING AND DISTRIBUTING THE FEE; ALLOWING AUDITING OF AMBULANCE PROVIDER REPORTS AND PAYMENTS; ALLOWING FOR PENALTIES AND INTEREST; REQUIRING REVENUES GENERATED BY THE FEE TO BE USED FOR SUPPLEMENTING AMBULANCE PROVIDER MEDICAID PAYMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) (a) "Ambulance provider" means a person licensed pursuant to 50-6-306 to provide ground ambulance transport, including transport for a municipal fire or police department or other government entity.

(b) The term does not include:

(i) an entity that exclusively provides air ambulance services; or

(ii) a hospital required to pay the utilization fees provided for in 15-66-102.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Emergency ambulance services" means any service delivered by an ambulance provider other than air ambulance services.

(4) "Fee" means the ambulance provider assessment fee as provided in [section 2].

(5) (A) "Net operating revenue" means gross revenue collected by ambulance providers for the delivery of emergency ambulance services, minus amounts deducted for bad debt, charity care, and payer discounts.

(B) THE TERM DOES NOT INCLUDE NONPATIENT SERVICE-RELATED REVENUE.

1

2 **NEW SECTION. Section 2. Ambulance provider assessment fee.** (1) Each ambulance provider
3 shall pay to the department a uniform ambulance provider assessment fee of 5.75% of net operating revenues.

4 (2) The department shall deposit the proceeds from collection of the fee in the ambulance provider
5 special revenue account provided for in [section 14].

6

7 **NEW SECTION. Section 3. Relation to other taxes and fees.** The ambulance provider assessment
8 fee imposed under [section 2] is, in addition to any other taxes and fees, required to be paid by ambulance
9 providers.

10

11 **NEW SECTION. Section 4. Rulemaking authority.** The department may adopt rules necessary to
12 administer [sections 1 through 13].

13

14 **NEW SECTION. Section 5. Reporting and collection of fees.** (1) On or before March 1 each year,
15 an ambulance provider shall file with the department a report of its net operating revenue received during the
16 previous calendar year. The report must be:

17 (a) in the form prescribed by the department; and

18 (b) accompanied by a payment in an amount equal to the assessment required to be paid under
19 [section 2].

20 (2) Revenue received for all emergency ambulance services provided during the calendar year
21 must be included in the calculation of the ambulance provider's net operating revenue regardless of the source
22 of payment for the services rendered, including services covered under fee-for-service and managed care
23 arrangements.

24 (3) In the case of a transfer of ownership, the successor in interest to the ambulance provider
25 assumes the liability for the fee.

26

27 **NEW SECTION. Section 6. Audit -- records.** (1) The department may audit the records and other
28 documents of an ambulance provider to ensure that the proper fee has been collected.

(2) The department may require the ambulance provider to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the fee paid.

(3) An ambulance provider shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate how the ambulance provider's net operating revenue was calculated. The ambulance provider shall maintain the records for at least 5 years from the date the report is due.

NEW SECTION. Section 7. Periods of limitation. (1) Except as otherwise provided in the section, a deficiency may not be assessed or collected with respect to the year for which a report is filed unless the notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for the assessment of the fees, the ambulance provider consents in writing to an assessment after the 5-year period, the fees may be assessed at any time prior to the expiration of the period agreed on.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the ambulance provider files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the ambulance provider has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period for filing a claim for a refund or credit or for allowing a refund or credit if no claim is filed, is automatically extended.

NEW SECTION. Section 8. Penalty and interest for delinquent fee. If an ambulance provider does not pay the required fee on or before the due date of the report as provided in [section 5], penalty and interest, as provided in 15-1-216, must be added to the fee.

NEW SECTION. Section 9. Estimated fee on failure to file. For the purposes of ascertaining the

1 correctness of any report, the department may:

2 (1) examine or cause to have examined by any designated agent or representative any books,
3 papers, records, or memoranda bearing on the information required to be included in the report;

4 (2) require the attendance of any officer or employee of the ambulance provider making the report
5 or the attendance of any other persons having relevant knowledge; and

6 (3) take testimony and require the production of any other material for its information.
7

8 **NEW SECTION. Section 10. Deficiency assessment -- penalty and interest -- hearing.** (1) (a) If
9 the department determines that the amount of the fee due is greater than the amount disclosed by the report, it
10 shall mail the ambulance provider a notice of the additional fees proposed to be assessed. Within 30 days after
11 the mailing of the notice, the ambulance provider may file with the department a written protest against the
12 proposed additional fees stating the grounds on which the protest is based. The ambulance provider may
13 request in its protest an oral hearing or an opportunity to present additional evidence relating to its fee liability.

14 (b) If a protest is not filed, the amount of the additional fees proposed to be assessed becomes
15 final on the expiration of the 30-day period.

16 (c) If a protest is filed, the department shall reconsider the proposed assessment and, if the
17 ambulance provider has requested, shall grant the provider an oral hearing. After consideration of the protest
18 and the evidence presented at an oral hearing, the department's action on the protest is final when it mails
19 notice of its action to the ambulance provider.

20 (2) When a deficiency is determined and the fees become final, the department shall mail notice
21 and demand to the ambulance provider for payment. Penalty and interest may be added to any deficiency
22 assessment as provided in 15-1-216.
23

24 **NEW SECTION. Section 11. Closing agreements.** (1) The director of the department or any person
25 authorized in writing by the director may enter into an agreement with any ambulance provider relating to the
26 liability of the provider in respect to fees imposed by [sections 1 through 13].

27 (2) An agreement under this section is final and conclusive, and except on a showing of fraud,
28 malfeasance, or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed on or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

NEW SECTION. Section 12. Credit for overpayment -- interest on overpayment. (1) If the

department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the ambulance provider and the balance must be refunded to the ambulance provider or its successor through reorganization, merger, or consolidation or to its shareholders on dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216. Interest is due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the ambulance provider to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than \$1.

(4) A payment not made incident to a discharge of actual ambulance provider assessment fee liability or a payment reasonably assumed to be imposed under [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 13. Warrant for distraint. If the ambulance provider assessment fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

NEW SECTION. Section 14. Ambulance provider assessment special revenue account --

statutory appropriation. (1) There is an account in the state special revenue account provided for in 17-2-102 to the credit of the department of public health and human services.

(2) The account consists of:

(a) money from the ambulance provider assessment provided for in [section 2];

(b) an amount equal to any federal financial participation claimed and received by the state for eligible expenditures from the account;

(c) any penalties and interest on penalties collected pursuant to [sections 1 through 13];

(d) appropriations or other money authorized by the legislature to be credited to the account; and

(e) income earned on the account.

(3) Money in the account must be used by the department as follows:

(a) ~~up to 1% of the new net federal revenue deposited in the account up to 1% of the revenue generated from the ambulance provider assessment~~ is available to the department each fiscal year for the costs of administering the supplemental payments provided for in this section; and

(b) the remainder must be used to supplement payments to ambulance providers, on an annual basis, in a manner that increases medicaid payments for emergency ambulance services up to the average commercial rate for the services, to the extent possible by the amount of funds generated from the fee.

(4) Money remaining in the account at the end of a fiscal year may not be expended or transferred for any other purpose.

(5) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes provided for in this section.

(6) In carrying out the requirements of this section, the department of public health and human services shall:

(a) seek federal financial participation in a manner that provides the maximum match for the revenue generated by the fee; and

(b) consult with any statewide association representing ambulance providers in the development and implementation of the payments.

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory

appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; [section 14]; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have

1 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
2 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
3 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
4 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
5 benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
6 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
7 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30,
8 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025;
9 pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8,
10 Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec.
11 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017,
12 the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-
13 209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates
14 June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June
15 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to
16 sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139,
17 L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion
18 of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004
19 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30,
20 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and
21 pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

22
23 **NEW SECTION. Section 16. Direction to department of revenue and department of public**
24 **health and human services.** ~~(1)~~ The legislature directs the department of revenue to delay collection of the
25 ambulance provider assessment fee provided for in [section 2] until the department of public health and human
26 services notifies the department of revenue that the centers for medicare and medicaid services has approved
27 the payments provided for in [section 14].

28 ~~(2) — The legislature directs the department of revenue and the department of public health and~~

~~human services to implement the provisions of [this act] no later than July 1, 2024.~~

NEW SECTION. Section 17. Codification instruction. (1) [Sections 1 through 13] are intended to be codified as a new chapter in Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 14].

NEW SECTION. Section 18. Effective date. [This act] is effective July 1, 2023.

NEW SECTION. Section 19. Contingent termination. (1) [Sections 1 through 15] terminate on the date that federal law or policy is amended so that the assessment fee collected pursuant to [sections 1 through 15] may not be considered as the state's share in claiming federal financial participation under the medicaid program. The department of public health and human services shall submit certification of the change in federal law or policy within 15 days of the occurrence of the contingency.

(2) If [sections 1 through 15] are terminated under the provisions of this section, all fees received or collected by the department of revenue prior to the date on which the act becomes void must be deposited in accordance with [section 2], and a person or party may not receive a refund of any fees received or collected by the department prior to the date on which [sections 1 through 15] become void."

- END -