

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 11, 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:

We have a shared desire to ensure Montana's ambulance service providers are equipped to provide patients across the state with life-saving medical care. I understand the importance of the financial stability of our ambulance providers, but as I mentioned to the Legislature in my amendatory veto letter for House Bill 828, I have grave concerns that this legislation fails to provide a mechanism for determining whether a new tax on ambulance providers will have its intended effect as envisioned by the Legislature.

I appreciate that the House of Representatives approved my proposed amendments to House Bill 828 to ensure that the Department of Public Health and Human Services (DPHHS) would have sufficient time to gather the data and conduct a proper analysis to determine the impact of the bill's new tax on ambulance providers prior to implementation, especially considering that no covered ambulance provider could opt out of the program pursuant to U.S. Centers for Medicare & Medicaid Services (CMS) regulations. While the House agreed that House Bill 828 needed to be amended, I am disappointed the Senate did not consider or adopt my amendments.

Unfortunately, the bill has been returned to me without amendments, leaving House Bill 828 unworkable. House Bill 828 does not provide sufficient time for DPHHS to gather data and conduct a proper analysis to determine the impact of the bill's new tax on ambulance providers and whether the Medicaid supplemental payment program for ambulance providers will have the impact intended by the Legislature. Without consistent and meaningful data regarding the effects of the tax on all ambulance providers, which DPHHS has rightfully requested from involved parties since 2022 but not received, DPHHS cannot be certain that struggling providers will not be further harmed by the arrangement. Additional time beyond the deadline provided in House Bill 828 may also be needed to gather the data for and obtain CMS approval of the application for the needed State Plan Amendment.

Furthermore, the provision in House Bill 828 on the use of new federal revenues generated from the tax for administrative purposes is inconsistent with federal limitations on the use of such federal funds. Codifying this error is inappropriate and could prove problematic for DPHHS.

Finally, as DPHHS repeatedly advised the Legislature and stakeholders, the public assurances that a provider association or other entity(ies) will “make whole” any provider which would pay more tax than it would receive in supplemental payments is inconsistent with clear guidance from CMS on federal requirements that “hold harmless” provisions, whether direct or indirect and explicit or implicit (including where a provider-affiliated organization provides the “hold harmless” payments), are impermissible and will not be allowed by CMS. *See Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments*, CMS, CMCS Informational Bulletin, Feb. 17, 2023, available at [Health Care related Taxes \(medicaid.gov\)](https://www.medicaid.gov). Taking such assurances out of the equation, DPHHS has been left with no concrete information or data that would reasonably suggest all ambulance providers will benefit from the tax and associated supplemental payment program.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto 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.”

While I share the goal of maintaining and improving Montanans’ access to critical life-saving services, it is not clear that House Bill 828 will achieve that goal, consistent with federal requirements, and may in fact have the opposite effect of putting the financial security of our rural providers in jeopardy.

During the interim, I encourage ambulance providers and other stakeholders to continue working with DPHHS to determine with certainty whether this provider tax and supplemental payment program are right for Montana.

Sincerely,



Greg Gianforte
Governor

Enclosure

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cc: Legislative Services Division
Christi Jacobsen, Secretary of State