

LEGAL REVIEW NOTE

Bill No.: SB 465

LC#: LC 1166, To Legal Review Copy, as
of February 10, 2023

Short Title: Require implementation of
medicaid community engagement
requirements

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

As drafted, SB 465 may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution. Article VI, clause 2, of the United States Constitution provides that federal law is the "supreme Law of the Land".

SB 465 directs the Montana department of public health and human services to implement the community engagement requirements provided for in 53-6-1308 and 53-6-1309 by the end of 2023 "regardless of whether the centers for medicare and medicaid services has approved a medicaid section 1115 waiver authorizing implementation of the requirements." Sec. 1(1).

SB 465 also provides that the HELP Act will be terminated on December 31, 2023, if any of the following events occur: (1) the department does not implement community engagement requirements; or (2) CMS notifies the department that it will take action to prevent the state from implementing community engagement requirements or monetarily penalize the state for implementing the requirements. Section 1(2)(b) and (2)(c).

In order to qualify for Medicaid funds, a 1115 waiver must be approved. In Bethesda Health, Inc. v. Azar, 389 F. Supp. 3d 32 (D.D.C. 2019), the D.C. District Court of Appeals explained:

Generally, under a traditional State plan, CMS only matches state expenditures for "medical assistance," a term limited by statute to certain enumerated services provided to certain enumerated classes of individuals. *See* 42 U.S.C. § 1396d(a) (defining "medical assistance"). Title XI § 1115(a) of the Social Security Act, 42 U.S.C. § 1315(a), however, authorizes the Secretary to waive some of Medicaid's statutory requirements for experimental state "demonstration projects" which, in the Secretary's judgment, will "assist in promoting the objectives of [Medicaid]." *Id.* These demonstration projects—also known as § 1115 waivers—"enable the states to try new or different approaches to the efficient and cost-effective delivery of health services, or to adapt their programs to the special needs of particular areas or groups of recipients," 42 C.F.R. § 430.25, and a state's costs towards a demonstration project "shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan." 42 U.S.C. § 1315(a)(2)(A). In plain English, the law allows a state to adopt a demonstration project, **with prior approval** from the Secretary, to "provide benefits to people who wouldn't otherwise be eligible for Medicaid benefits; and the costs of these benefits are treated as if they are matchable Medicaid expenditures." Bethesda Health, Inc. v. Azar, 389 F. Supp. 3d at 35 (D.D.C. 2019) (Emphasis added).

As drafted, SB 465 directs the department of public health and human services to implement the community engagement requirements without first receiving a 1115 waiver. Consequently, it may raise potential federal constitutional issues related to the Supremacy Clause in that it proposes that the state implement a requirement that has not secured a waiver as required under federal law.

Requester Comments: