

SENATE BILL NO. 554

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HOSPITALS OPERATING AS NONPROFIT HEALTH CARE FACILITIES; LIMITING WHAT A NONPROFIT HEALTH CARE FACILITY MAY CHARGE FOR A SERVICE OR ITEM TO 300% OF THE MEDICARE REIMBURSEMENT RATE; CREATING AN EXCISE TAX FOR A FACILITY THAT CHARGES MORE THAN 300% OF THE MEDICARE REIMBURSEMENT RATE FOR A SERVICE OR ITEM; REVOKING THE NONPROFIT STATUS OF A FACILITY THAT CHARGES MORE THAN 300% OF THE MEDICARE REIMBURSEMENT RATE FOR A SERVICE OR ITEM; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 50-5-121, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 50-5-121, MCA, is amended to read:

"50-5-121. Hospital discrimination based on ability to pay prohibited -- community benefit and financial assistance requirements -- nonprofit health care facility requirements -- reporting requirements -- rulemaking authority. (1) A hospital, critical access hospital, or rural emergency hospital must have in writing a policy applying to all patients, including medicaid and medicare patients, that prohibits discrimination based on a patient's ability to pay.

(2) A hospital, critical access hospital, or rural emergency hospital may not transfer a patient to another hospital or health care facility based on the patient's ability to pay for health care services.

(3) (a) A hospital operating as a nonprofit health care facility that is not a critical access hospital or rural emergency hospital may not charge more than 300% of the medicare reimbursement rate, as that rate is set at the time of the charge, for a medicare-eligible service or item.

(b) A hospital operating as a nonprofit health care facility that is not a critical access hospital or rural emergency hospital is subject to the tax established in [sections 2 through 10] if it violates subsection

1 ~~(3)(a).~~

2 ~~(3)(4)~~ (a) A hospital operating as a nonprofit health care facility must have in writing:

3 (i) a financial assistance policy consistent with federal standards and standards established by the
4 department, applicable to the area the hospital serves; and

5 (ii) a community benefit policy consistent with federal standards and standards established by the
6 department.

7 (b) A hospital, critical access hospital, or rural emergency hospital operating as a nonprofit health
8 care facility shall:

9 (i) adhere to the written financial assistance and community benefit policies; and

10 (ii) make the policies available to the public.

11 ~~(5)~~ (a) A hospital, critical access hospital, or rural emergency hospital operating as a nonprofit
12 health care facility shall submit an annual report by September 1 of each year to the department of public health
13 and human services and the children, families, health, and human services interim committee in accordance
14 with 5-11-210 that includes the schedule H portion of the hospital's previous taxable year's internal revenue
15 service form 990.

16 ~~(b)~~ The report pursuant to subsection (5)(a) may not contain redactions, except to protect
17 personally identifiable information or when required by the Federal Health Insurance Portability and
18 Accountability Act of 1996.

19 ~~(4)(6)~~ No later than July 1, 2024, the ~~The~~ department shall adopt rules to implement the financial
20 assistance and community benefit requirements of this part, which must be specific to the hospital and the area
21 or areas it serves. Rules must include but are not limited to rules that:

22 (a) define financial assistance and community benefit consistent with federal standards, wherever
23 possible;

24 (b) establish the standards for community benefit and financial assistance applicable to hospitals
25 operating as nonprofit health care facilities consistent with federal standards, wherever possible; and

26 (c) establish penalties for failing to comply with 50-5-106 and this section."
27

28 NEW SECTION. Section 2. Definitions. As used in 50-5-121 and [sections 2 through 10], the

1 following definitions apply:

2 (1) "Hospital" means a hospital that is not a critical access hospital or rural emergency hospital, as
3 those terms are defined in 50-5-101.

4 (2) "Nonprofit health care facility" has the same meaning as provided in 50-5-101.

5 (3) "Qualifying patient" means a patient who is not enrolled in medicare or medicaid.
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7 **NEW SECTION. Section 3. Nonprofit health care facility excess charge tax.** (1) For services
8 provided after December 31, 2026, the nonprofit health care facility excess charge tax is imposed on a hospital
9 operating as a nonprofit health care facility each time the hospital charges a qualifying patient more than 300%
10 of the medicare reimbursement rate, as that rate is set at the time of the charge, for a medicare-eligible service
11 or item.

12 (2) The nonprofit health care facility excess charge tax is imposed on a hospital operating as a
13 nonprofit health care facility at the following rates:

14 (a) for calendar year 2027, 25% of the amount that the hospital charged to the qualifying patient in
15 excess of 300% of the medicare reimbursement rate;

16 (b) for calendar year 2028, 35% of the amount that the hospital charged to the qualifying patient in
17 excess of 300% of the medicare reimbursement rate;

18 (c) for calendar year 2029, 45% of the amount that the hospital charged to the qualifying patient in
19 excess of 300% of the medicare reimbursement rate; and

20 (d) for calendar year 2030 and each year afterward, 50% of the amount that the hospital charged
21 to the qualifying patient in excess of 300% of the medicare reimbursement rate.

22 (3) The department shall deposit the taxes paid under this section in the nonprofit health care
23 facility excess charge tax account established in [section 11].
24

25 **NEW SECTION. Section 4. Payment -- payment forms -- recordkeeping -- authority of**
26 **department.** (1) Before the 10th day of each month, a hospital operating as a nonprofit health care facility shall
27 pay the tax due as provided in [section 3] for the previous calendar month and complete a payment form as
28 prescribed by the department.

(2) Each payment and payment form must be authenticated by the hospital filing the form and submitting the payment or by the hospital's agent authorized in writing to file the form and submit the payment.

(3) (a) A hospital required to pay to the department the taxes imposed by [section 3] shall keep for 5 years all receipts, bills, insurance reimbursement claims, and other documents related to the charge for the fee or service that is subject to the tax.

(b) For the purpose of determining compliance with the provisions of [sections 2 through 10] the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the hospital filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a hospital official or employee having knowledge or information relevant to the tax charged;

(ii) compel the production of books, papers, records, or memoranda by the hospital official or employee required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, forms may be computer-generated and electronically filed.

NEW SECTION. Section 5. Deficiency assessment -- penalty and interest -- statute of limitations. (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a payment form, the department shall mail to the hospital operating as a nonprofit health care facility a notice pursuant to 15-1-211 of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The licensee may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) The amount of tax due under any payment form may be determined by the department within 5 years after the payment form was filed, regardless of whether the payment form was filed on or after the last day prescribed for filing. For the purposes of this section, a payment form due under [sections 2 through 10] and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

NEW SECTION. Section 6. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file -- penalty and interest. (1) If the hospital operating as a nonprofit health care facility fails to file any payment form required by [section 4] within the time required, the department may, at any time, audit the hospital or estimate the taxes due from any information in the department's possession and, based on the audit or estimate, assess the hospital for the taxes, penalties, and interest due the state.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the hospital operating as a nonprofit health care facility a notice pursuant to 15-1-211 of the tax, penalty, and interest proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The hospital may seek review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to 15-1-206.

NEW SECTION. Section 7. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 2 through 10].

(b) If a tax imposed by [sections 2 through 10] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the hospital from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the hospital has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the hospital if a claim is required before funds are available for offset.

NEW SECTION. Section 8. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 2 through 10] must be filed within 5 years of the date that the payment form was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the payment form was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 9. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful for an employee of the department or any other public official or public employee to disclose or otherwise make known information that is disclosed in a payment form required to be filed under [sections 2 through 10] or information that concerns the affairs of the hospital making the payment and that is acquired from the hospital's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity of a hospital submitting a payment or payment form or the content of any particular report or form. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618 or 15-31-511 or for violating the confidentiality of individual income tax or corporate income tax information.

(2) (a) This section may not be construed to prohibit the department from providing information

1 obtained under [sections 2 through 10] to the department of justice, the internal revenue service, or law
2 enforcement to be used for the purpose of investigation and prevention of criminal activity, noncompliance, tax
3 evasion, fraud, and abuse under [sections 2 through 10].

4 (b) In order to implement the provisions of [sections 2 through 10], the department may furnish
5 information on a reciprocal basis to the taxing officials of another state if the information remains confidential
6 under statutes within the state receiving the information that are similar to this section.

7 (3) In order to facilitate processing of payment forms and payment of taxes required by [sections 2
8 through 10], the department may contract with vendors and may disclose data to the vendors. The data
9 disclosed must be administered by the vendor in a manner consistent with this section.

10 (4) (a) The officers charged with the custody of the reports and payment forms may not be
11 required to produce them or evidence of anything contained in them in an action or proceeding in a court,
12 except in an action or proceeding:

13 (i) to which the department is a party under the provisions of [sections 2 through 10] or any other
14 taxing act; or

15 (ii) on behalf of a party to any action or proceedings under the provisions of [sections 2 through
16 10] or other taxes when the reports or facts shown by the reports are directly involved in the action or
17 proceedings.

18 (b) The court may require the production of and may admit in evidence only as much of the reports
19 or of the facts shown by the reports as are pertinent to the action or proceedings.

20 (5) This section may not be construed to limit the investigative authority of the legislative branch as
21 provided in 5-11-106, 5-12-303, or 5-13-309.

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23 **NEW SECTION. Section 10. Department to make rules.** The department of revenue shall prescribe
24 rules necessary to carry out the purposes of imposing and collecting the nonprofit health care facility excess
25 charge tax.

26
27 **NEW SECTION. Section 11. Nonprofit health care facility excess charge tax account.** (1) There
28 is a nonprofit health care facility excess charge tax account in the state special revenue fund in the state

1 treasury. The money in the account is allocated to the department of public health and human services for the
2 purposes enumerated in subsection (2) and may not be used to pay the expenses of any other program or
3 service administered in whole or in part by the department of public health and human services or any other
4 state government entity.

5 (2) Money in the nonprofit health care facility excess charge tax account may be used as follows:

6 (a) 65% and any portion remaining after administrative costs to the department, pursuant to
7 subsection (2)(c), for any lawful purpose related to the Montana medicaid program established in Title 53,
8 chapter 6, part 1;

9 (b) 25% for developing the health care workforce serving rural areas of the state; and

10 (c) 10% may be used by the department for the administration of [this act], with any portion
11 remaining reverted to the purpose of subsection (2)(a).

12
13 **NEW SECTION. Section 12. Codification instruction.** (1) [Sections 2 through 10] are intended to
14 be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 10].

15 (2) [Section 11] is intended to be codified as an integral part of Title 50, chapter 5, part 1, and the
16 provisions of Title 50, chapter 5, part 1, apply to [section 11].

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18 **NEW SECTION. Section 13. Effective date.** [This act] is effective December 31, 2026.

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