

CFHHS LEGISLATION: "Cleanup" Proposals

Children, Families, Health, and Human Services Interim Committee

Jan. 25, 2008

In reviewing legislation approved in 2007, Legislative Services Division staff members have found inconsistencies in three health and human services statutes that should be corrected through legislative action. The Children, Families, Health, and Human Services Interim Committee would have authority to request the drafting of corrective legislation for the laws summarized below.

Caretaker Relatives and School Enrollment

The 2007 Legislature approved Senate Bill 49, which allows a non-parent relative who is taking care of a child to enroll the child in school, discuss certain school-related matters with school officials, and consent to school-related medical care if the person completes a caretaker relative educational authorization affidavit. While 20-5-503(6), MCA) makes an affidavit effective through the end of the school year, the language suggested for the affidavit itself – in subsection (9) of 20-5-503 – makes the affidavit valid for only six months after it is signed (see reverse side).

- ◆ **Staff recommends** the drafting of legislation to make the suggested affidavit language in subsection (9) consistent with the time period outlined in subsection (6).

Hospital Bed Tax

The 2007 Legislature approved two bills relating to the hospital facility utilization fee, also known as the "hospital bed tax." Money raised by the fee is deposited in a special revenue account to provide funding for increases in Medicaid payments to hospitals. The fee was enacted as 15-66-102, MCA, in 2003 for a two-year period, but was extended by the 2005 Legislature and scheduled to terminate on June 30, 2007. In 2007, the Legislature approved two bills related to the fee:

- Senate Bill 118 extended the fee until June 30, 2009; set the rate of the fee for each year of the extended period; and amended Session Laws to change the termination date of the statute to June 30, 2009.
- Senate Bill 525 removed the sunset provision entirely and gradually increased the tax to \$50 a day, beginning Jan. 1, 2010.

SB525 contained instructions for coordinating the language with SB118 if both bills passed, but it failed to repeal the session laws containing the June 30, 2009 termination date. Without corrective action, the law authorizing the fee itself will terminate before the permanent extension of the fee goes into effect.

- ◆ **Staff recommends** the drafting of legislation to repeal the termination date for 15-66-102.

Over-the-Counter Drugs

Chapter 31 of Title 50 – known as The Montana Food, Drug, and Cosmetic Act – has governed the dispensing of prescription drugs for decades. In that chapter, 50-31-307, MCA, requires a prescription for any drug that is habit forming or contains a narcotic; that may be toxic or potentially harmful when not used under the supervision of a licensed practitioner; or that is approved only for limited use.

Meanwhile, Chapter 32 of Title 50 governs the dispensing of controlled substances and establishes how the Board of Pharmacy will determine whether to designate a drug as a dangerous drug. In that chapter, 50-32-205, MCA, requires the board to exclude a non-narcotic drug from the dangerous drug schedule if -- under 50-31-307 -- it may be lawfully sold without a prescription.

- ◆ **Staff recommends** the drafting of legislation to remove the reference to 50-31-307 from 50-32-205 because 50-31-307 does not deal with the dispensing of over-the-counter drugs.

20-5-503. Caretaker relative educational authorization affidavit -- use -- immunity -- format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.....

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative...

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S
EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by [this section].

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child)...

7. NOTICES:

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

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