Montana Legislative Services Division

Office of Research and Policy Analysis
David D. Bohyer, Director

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

SCEG
MAY 15, 2012
EXHIBIT 16

May 8, 2012

TO: Select Committee on Efficiency in Government
FROM: Dave Bohyer
RE: Payment of invoices by state agencies

At the April 10 meeting of the Select Committee in Butte, the members asked staff to examine the state's policy regarding payment of invoices from vendors, providers, and others. Please accept this memorandum as the staff's response.

The primary statute governing payment of money by the state is section 17-8-242, MCA.

> **17-8-242. Interest assessed on amounts due.** (1) Except as provided in 17-8-244, a state agency shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the agency fails to make timely payment.
>
> (2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

The exception provided for in 17-8-242(1) is notable in regard to the Committee's interest in the state's payment policy as the policy applies to goods or services provided under Medicaid.

> **17-8-244. Exemptions.** Section 17-8-242 does not apply to the following:
>
> (1) interagency or intergovernmental transactions;
>
> (2) claims subject to a good faith dispute brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies because of natural disasters, disruptions in postal or delivery service, work stoppage because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana ***medicaid*** *or workers' compensation program if reasonable cause for nonpayment exists.* (Emphasis added.)

The Montana Code Annotated does not expand upon circumstances that denote "reasonable cause for nonpayment". A search of the Administrative Rules of Montana also did not reveal any provisions that clarify circumstances that indicate what is "reasonable cause for nonpayment".[1]

The exception applies to supplies/services provided in programs for which "eligibility" must be determined, that are administered through contracts between government agencies and private entities, and for which invoices, especially for services, are sometimes subject to review, even extensive review, by the administering agency. For reasons of necessity and sufficiency, the reviews can take more than 30 days to complete, with the payment decision to follow. Consequently, the two exceptions may be warranted.

Additionally, both the Medicaid and workers compensation insurance programs are administered through contracts between governments agencies and private entities and, as such, the contract provisions typically govern payment procedures, including timelines.[2]

In summary, Montana law generally allows state entities 30 days to pay most invoices for goods and services without penalty. If a legitimate invoice is not paid within 30 days, the agency is penalized with an interest charge of 0.05% per day (18.25% annually) over 30 days of the amount due to the vendor, provider, or contractor.

Respectfully submitted.

HB 642\050812a.wpd

---

[1] Laurence Hubbard, CEO, Montana State Fund, and Mary Dalton, Medicaid Program Manager, DPHHS, each stated that they are unaware of any Montana administrative rules that implement 17-8-242 or 17-8-244, MCA. However, Ms. Dalton noted that DPHHS is subject to many federal rules (CFR) under the Medicaid program that require prompt payment, 30 days in most cases, and that both DPHHS and the federal CMS (Center for Medicare and Medicaid Services) monitor invoicing and payments very closely. Email between Dave Bohyer and Lanny Hubbard, May 7, 2012; and phone conversation between Dave Bohyer and Mary Dalton, May 8, 2012.

[2] Title 39, ch. 71, parts 6 and 7, MCA, et seq., contain various provisions regarding submission and payment of workers' compensation claims.