

HOUSE BILL NO. 387

INTRODUCED BY K. WAGONER, E. MCCLAFFERTY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE CONTINUUM OF CARE FOR
5 PEOPLE WITH DEVELOPMENTAL DISABILITIES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH
6 AND HUMAN SERVICES TO ESTABLISH CONTINUED USE OF A 12-BED INTENSIVE BEHAVIOR CENTER
7 SECURE FACILITY AS A COMPONENT OF THE CONTINUUM OF CARE; EXTENDING THE CLOSURE DATE
8 FOR THE MONTANA DEVELOPMENTAL CENTER; EXTENDING THE DATE FOR COURT COMMITMENTS
9 TO THE MONTANA DEVELOPMENTAL CENTER; PROVIDING A CAP ON THE CENSUS AT THE MONTANA
10 DEVELOPMENTAL CENTER; PROVIDING DIRECTION TO THE DEPARTMENT; PROVIDING DEFINITIONS;
11 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 1, AMENDING SECTIONS 53-20-125 AND
12 53-20-129, MCA; AMENDING SECTIONS 1, 3, AND 4, CHAPTER 444, LAWS OF 2015; REPEALING SECTION
13 2, CHAPTER 444, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION
14 DATE; AMENDING SECTION 1, CHAPTER 444, LAWS OF 2015."

15

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

17

18 NEW SECTION. Section 1. Definitions. As used in this part, the following definitions apply:

- 19 (1) "Center" means the intensive behavior center provided for in [section 2].
20 (2) "Department" means the department of public health and human services provided for in 2-15-2201.
21 (3) "Developmental disability" has the meaning provided in 53-20-102.

22

23 NEW SECTION. Section 2. Intensive behavior center limitations. (1) ~~The department shall establish~~
24 ~~a~~ THERE IS A STATE-OPERATED 12-bed intensive behavior center ~~as a new service~~ for individuals with a
25 developmental disability who are in need of intensive treatment because of continuous or repeated behaviors that
26 pose an imminent risk of serious harm to self or others.

27 (2) The center shall provide a program of active treatment in a secure residential environment. The
28 treatment must:

- 29 (a) address the behavioral issues of each resident; and
30 (b) foster for each resident the transition to and residency in less restrictive service settings.

1 (3) The center may serve only individuals for whom ~~the department has asked a county attorney to file~~
 2 a petition HAS BEEN FILED alleging the individual is in need of the services and secure setting of the center and
 3 requesting that the individual be committed to the center for services ~~through imposition of a community treatment~~
 4 ~~plan as provided in 53-20-124.~~

5
 6 NEW SECTION. Section 3. Licensing. The intensive behavior center operated pursuant to [sections
 7 1 through 4 3] must be licensed as an intermediate care facility for the developmentally disabled in accordance
 8 with 50-5-238.

9
 10 ~~NEW SECTION. Section 4. Rulemaking authority. The department may adopt rules to carry out~~
 11 ~~[sections 1 through 4], including but not limited to rules for eligibility requirements for admission to the facility.~~

12
 13 SECTION 4. SECTION 53-20-125, MCA, IS AMENDED TO READ:

14 **"53-20-125. Outcome of screening -- recommendation for commitment or imposition of**
 15 **community treatment plan -- hearing.** (1) A court may commit a person to a residential facility or impose a
 16 community treatment plan only if the person:

17 (a) is 18 years of age or older; and
 18 (b) is determined to be seriously developmentally disabled and in need of commitment to a residential
 19 facility or imposition of a community treatment plan by the residential facility screening team, as provided in
 20 53-20-133, and by a court, as provided in 53-20-129 or in this section.

21 (2) After the screening required by 53-20-133, the residential facility screening team shall file its written
 22 recommendation and report with the court. The report must include the factual basis for the recommendation and
 23 must describe any tests or evaluation devices that have been employed in evaluating the respondent. The
 24 residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and
 25 any other party requesting it the social and placement information that the team relied on in making its
 26 determination.

27 (3) The residential facility team may recommend commitment to a specific residential facility.

28 (4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

29 (a) the respondent;
 30 (b) the respondent's parents, guardian, or next of kin, if known;

- 1 (c) the responsible person;
- 2 (d) the respondent's advocate, if any;
- 3 (e) the county attorney;
- 4 (f) the residential facility to which the residential facility screening team has recommended commitment;
- 5 (g) the attorney for the respondent, if any; and
- 6 (h) the attorney for the parents or guardian, if any.
- 7 (5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's
- 8 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the
- 9 residential facility screening team. The request for a hearing must be made in writing within 15 days of service
- 10 of the report.
- 11 (6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).
- 12 (7) The hearing must be held before the court without jury. The rules of civil procedure apply.
- 13 (8) Upon receiving the report of the residential facility screening team and after a hearing, if one is
- 14 requested, the court shall enter findings of fact and take one of the following actions:
- 15 (a) If both the residential facility screening team and the court find that the respondent is seriously
- 16 developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent
- 17 committed to a residential facility for an extended course of treatment and habilitation, subject to the provisions
- 18 of subsection (12).
- 19 (b) If both the residential facility screening team and the court find that the respondent is seriously
- 20 developmentally disabled but either the residential facility screening team or the court finds that a less restrictive
- 21 community treatment plan has been proposed, the court may impose a community treatment plan that meets the
- 22 conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties
- 23 or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4),
- 24 it may order the respondent committed to a residential facility. The court may not impose a community treatment
- 25 plan unless the residential facility screening team certifies that all services in the proposed plan meet the
- 26 conditions of 53-20-133(4)(c) and (4)(d).
- 27 (c) If either the residential facility screening team or the court finds that the respondent has a
- 28 developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and
- 29 refer the respondent to the department of public health and human services to be considered for placement in
- 30 voluntary community-based services according to 53-20-209.

1 (d) If either the residential facility screening team or the court finds that the respondent does not have
 2 a developmental disability or is not in need of developmental disabilities services, the court shall dismiss the
 3 petition.

4 (9) (a) If the residential facility screening team recommends commitment to a residential facility or
 5 imposition of a community treatment plan and none of the parties notified of the recommendation request a
 6 hearing within 15 days of service of the screening team's report, the court may:

7 (i) issue an order committing the respondent to the residential facility for an extended period of treatment
 8 and habilitation;

9 (ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth
 10 in 53-20-133(4); or

11 (iii) initiate its own inquiry as to whether an order should be granted.

12 (b) The court may not impose a community treatment plan unless the residential facility screening team
 13 certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

14 (10) The court may refuse to authorize commitment of a respondent to a residential facility for an
 15 extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

16 (11) A court order entered in a proceeding under this part must be provided to the residential facility
 17 screening team.

18 (12) (a) A court may not commit a respondent to a residential facility unless the facility has confirmed in
 19 writing that admission of the respondent will not cause the census at the residential facility to exceed its licensed
 20 capacity.

21 (b) After ~~December 31, 2016~~ March 31, 2019, a court may not commit a respondent to the Montana
 22 developmental center."

23

24 **SECTION 5. SECTION 53-20-129, MCA, IS AMENDED TO READ:**

25 **"53-20-129. Emergency admission and commitment.** (1) Subject to the provisions of subsection (3),
 26 a person believed to be seriously developmentally disabled may be admitted to a residential facility or a temporary
 27 court-ordered community treatment plan may be imposed on an emergency basis without notice to the person
 28 or approval by the residential facility screening team when necessary to protect the person or others from death
 29 or serious bodily injury, as defined in 45-2-101.

30 (2) An emergency admission to a residential facility may be initiated only by a developmental disabilities

1 professional.

2 (3) (a) An emergency admission to a residential facility may not proceed unless the residential facility
3 has confirmed in writing that admission of the person will not cause the census at the facility to exceed its
4 licensed capacity and that the facility can accommodate the emergency needs of the person.

5 (b) After ~~December 31, 2016~~ March 31, 2019, an emergency admission may not be made to the Montana
6 developmental center.

7 (4) A petition for emergency commitment must be filed on the next judicial day after an emergency
8 admission to a residential facility by the county attorney of the county where the respondent resides.

9 (5) A petition for imposition of an emergency community treatment plan may be filed by the county
10 attorney of the county where the respondent resides and must include or have attached the written report of a
11 case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

12 (6) The residential facility screening team shall report back to the court on the seventh judicial day
13 following the filing of the petition for emergency commitment or imposition of a temporary community treatment
14 plan.

15 (7) Once the report of the residential facility screening team is received by the court, continued
16 placement in the residential facility or continued imposition of the temporary community treatment plan may not
17 continue without an order of the court for emergency commitment or continued imposition of the community
18 treatment plan.

19 (8) A court may order an emergency commitment or continue a temporary community treatment plan
20 only when the residential facility screening team has recommended and the court has determined that the
21 emergency commitment or continued imposition of a community treatment plan is necessary to protect the
22 respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community
23 treatment plan must meet the conditions set forth in 53-20-133(4).

24 (9) An order for emergency commitment or continued imposition of a temporary community treatment
25 plan may be entered without a hearing before the court if the court finds that the record supports the order.

26 (10) An emergency commitment to a residential facility or imposition of a temporary community treatment
27 plan may not continue for longer than 30 days after placement in the residential facility or imposition of a
28 temporary community treatment plan unless a petition for an extended commitment to the residential facility or
29 for imposition of a community treatment plan as provided in 53-20-121 has been filed."

30

1 **Section 6.** Section 1, Chapter 444, Laws of 2015, is amended to read:

2 **"Section 1. Legislative intent -- direction to department of public health and human services.** It
3 is the intent of the legislature to provide services to individuals with developmental disabilities in the community,
4 as established in 53-20-101 and 53-20-301, and to close the Montana developmental center. To accomplish this
5 purpose, the legislature directs the department of public health and human services to:

6 (1) ~~in conjunction with the transition planning committee established in [section 2], develop and~~
7 ~~implement a plan to close the Montana developmental center by June 30, 2017~~ 2019; and

8 (2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop
9 the services needed to move residents out of the Montana developmental center and into community-based
10 services; ~~and;~~

11 ~~(3) transition most residents out of the Montana developmental center and into community-based~~
12 ~~services by December 31, 2016. As part of this transition, the legislature intends for the department of public~~
13 ~~health and human services to:~~

14 ~~—— (a) actively pursue the timely discharge of Montana developmental center residents into~~
15 ~~community-based services; and~~

16 ~~—— (b) work with community providers to develop necessary services.~~

17 (3) CAP THE CENSUS AT THE MONTANA DEVELOPMENTAL CENTER AT 24 RESIDENTS AND CONTINUE TO
18 TRANSITION RESIDENTS OUT OF THE MONTANA DEVELOPMENTAL CENTER AND INTO COMMUNITY-BASED SERVICES. AS
19 PART OF THIS TRANSITION, THE LEGISLATURE INTENDS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
20 TO:

21 (A) ACTIVELY PURSUE THE TIMELY DISCHARGE OF MONTANA DEVELOPMENTAL CENTER RESIDENTS INTO
22 COMMUNITY-BASED SERVICES; AND

23 (B) WORK WITH COMMUNITY PROVIDERS TO DEVELOP NECESSARY SERVICES.

24 (4) BY NO LATER THAN SEPTEMBER 30, 2017, SUBMIT TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES
25 A REQUEST FOR AN AMENDMENT TO THE MEDICAID HOME AND COMMUNITY-BASED SERVICES 0208 WAIVER FOR
26 INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES THAT, WHILE NOT EXCEEDING THE AMOUNT OF MEDICAID WAIVER
27 APPROPRIATIONS IN HOUSE BILL NO. 2:

28 (A) ALLOWS INDIVIDUALS AND PROVIDERS TO USE THE ENTIRETY OF EACH INDIVIDUAL'S COST PLAN TO PROVIDE
29 SERVICES THAT THE INDIVIDUAL NEEDS TO BE SUCCESSFUL IN THE COMMUNITY, INCLUDING A REQUEST TO PAY A DAILY
30 RATE RATHER THAN AN HOURLY RATE AS ONE OPTION FOR FULLY USING THE COST PLAN;

1 (B) PROVIDES THE FLEXIBILITY NECESSARY TO ENABLE THE PROVISION OF PROFESSIONAL SERVICES TO AN
 2 INDIVIDUAL; AND

3 (C) PROVIDES A SUFFICIENT NUMBER OF EMERGENCY SLOTS THROUGHOUT MONTANA TO ACCOMMODATE
 4 INDIVIDUALS WHO MAY GO INTO CRISIS."

5
 6 **SECTION 7. SECTION 3, CHAPTER 444, LAWS OF 2015, IS AMENDED TO READ:**

7 **"Section 3. ~~Transition planning -- department~~ Department of public health and human services**
 8 **responsibilities -- rulemaking.** The department of public health and human services shall:

9 ~~—— (1) provide members of the transition planning committee with necessary information and staff support~~
 10 ~~to carry out the committee's duties;~~

11 ~~—— (2) implement a plan for the closure of the Montana developmental center based on recommendations~~
 12 ~~from the transition planning committee; and~~

13 ~~—— (3) designate by rule the criteria that a community-based service must meet to be designated as a~~
 14 ~~residential facility."~~

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 16 **SECTION 8. SECTION 4, CHAPTER 444, LAWS OF 2015, IS AMENDED TO READ:**

17 **"Section 4. Transfer fee.** The department of public health and human services shall assess a fee of
 18 ~~\$4,000~~ \$1,100 on a provider of community-based services who returns an individual to the Montana
 19 developmental center within 90 days after accepting the individual for community-based services."

20
 21 **NEW SECTION. Section 9. Direction to department of public health and human services**

22 **concerning closure of Montana developmental center -- REPORT TO LEGISLATURE.** The legislature directs the
 23 department of public health and human services to:

24 (1) USE THE ASSESSMENT AND STABILIZATION UNIT AT THE MONTANA DEVELOPMENTAL CENTER CAMPUS AS THE
 25 INTENSIVE BEHAVIOR CENTER PROVIDED FOR IN [SECTION 2];

26 (2) continue to actively discharge individuals from the Montana developmental center during the
 27 biennium beginning July 1, 2017, and to;

28 (3) REPORT TO THE 2019 LEGISLATURE ON:
 29 (A) THE AVAILABILITY OF CRISIS SERVICES IN THE COMMUNITY, INCLUDING ANY UNMET NEED FOR CRISIS SERVICES

30 AND THE DEPARTMENT'S PLANS FOR MEETING THAT NEED;

1 (B) THE STATUS OF THE CLOSURE EFFORTS; AND

2 (C) RECOMMENDATIONS FOR COMPLETING CLOSURE OF THE MONTANA DEVELOPMENTAL CENTER, INCLUDING

3 RECOMMENDATIONS FOR ANY LEGISLATIVE ACTION NEEDED; AND

4 (4) close the Montana developmental center on or before June 30, 2019.

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6 ~~NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 4] are intended to be codified~~
7 ~~as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [sections 1 through~~
8 ~~4].~~

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10 NEW SECTION. **SECTION 10. REPEALER.** SECTION 2, CHAPTER 444, LAWS OF 2015, IS REPEALED.

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12 NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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14 NEW SECTION. **SECTION 12. TERMINATION.** [SECTIONS 1 THROUGH 3] TERMINATE JUNE 30, 2019.

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- END -