

1 HOUSE BILL NO. 576

2 INTRODUCED BY A. WITTICH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE LICENSING,
5 INSPECTION, AND CERTIFICATION OF HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT OF
6 JUSTICE TO LICENSE, INSPECT, AND CERTIFY HEALTH CARE FACILITIES; AMENDING SECTIONS
7 7-34-2301, 15-6-201, 15-30-2366, 15-60-101, 15-60-201, 15-66-201, 15-67-201, 20-7-436, 20-9-311, 33-22-702,
8 33-22-705, 33-36-305, 45-5-624, 45-9-208, 50-5-101, 50-5-115, 50-5-1103, 50-5-1202, 50-8-101, 52-1-103,
9 52-2-603, 52-2-621, 52-2-622, 52-4-202, 52-4-204, 52-4-205, 52-8-101, 53-6-106, 53-6-107, 53-6-109, 53-6-401,
10 53-19-102, 53-20-104, 53-20-302, 53-20-305, 53-21-1001, 53-24-201, 53-24-204, 53-24-207, 53-24-208,
11 76-2-411, AND 76-2-412, MCA; PROVIDING AN APPROPRIATION FOR TRANSITION EMPLOYEES; AND
12 PROVIDING EFFECTIVE DATES."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 7-34-2301, MCA, is amended to read:
17 **"7-34-2301. Construction and operation of county boarding home authorized.** The board of county
18 commissioners may erect, furnish, equip, expand, improve, maintain, and operate a boarding home for the aged
19 that does not constitute a health care facility, subject to any applicable standards established by the department
20 of ~~public health and human services~~ justice. A boarding home may be located adjacent to or in a building
21 containing a health care facility and may be operated in conjunction with the health care facility."

22
23 **Section 2.** Section 15-6-201, MCA, is amended to read:
24 **"15-6-201. Governmental, charitable, and educational categories -- exempt property.** (1) The
25 following categories of property are exempt from taxation:
26 (a) except as provided in 15-24-1203, the property of:
27 (i) the United States, except:
28 (A) if congress passes legislation that allows the state to tax property owned by the federal government
29 or an agency created by congress; or
30 (B) as provided in 15-24-1103;

- 1 (ii) the state, counties, cities, towns, and school districts;
- 2 (iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;
- 3 (iv) municipal corporations;
- 4 (v) public libraries;
- 5 (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- 6 (vii) special districts created pursuant to Title 7, chapter 11, part 10; and
- 7 (viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located
- 8 entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is
- 9 used exclusively by the tribe for essential government services. Essential government services are tribal
- 10 government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public
- 11 transit, and public parks and recreational facilities.
- 12 (b) buildings and furnishings in the buildings that are owned by a church and used for actual religious
- 13 worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with
- 14 the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings,
- 15 which must be identified in the application, and all land and improvements used for educational or youth
- 16 recreational activities if the facilities are generally available for use by the general public but may not exceed 15
- 17 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes,
- 18 or subdivision requirements;
- 19 (c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized
- 20 Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used
- 21 exclusively for religious purposes;
- 22 (d) property owned and used exclusively for agricultural and horticultural societies not operated for gain
- 23 or profit;
- 24 (e) property, not to exceed 80 acres, which must be legally described in the application for the
- 25 exemption, used exclusively for educational purposes, including dormitories and food service buildings for the
- 26 use of students in attendance and other structures necessary for the operation and maintenance of an
- 27 educational institution that:
- 28 (i) is not operated for gain or profit;
- 29 (ii) has an attendance policy; and
- 30 (iii) has a definable curriculum with systematic instruction;

- 1 (f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing
2 schools, colleges, and universities if the property meets the requirements of subsection (1)(e);
- 3 (g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the
4 department of ~~public health and human services~~ justice and organized under Title 35, chapter 2 or 3. A health
5 care facility that is not licensed by the department of ~~public health and human services~~ justice and organized
6 under Title 35, chapter 2 or 3, is not exempt.
- 7 (h) property that is:
- 8 (i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
9 or
10 (B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and
11 (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care
12 and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
- 13 (iii) not maintained and not operated for gain or profit;
- 14 (i) subject to subsection (2), property that is owned or property that is leased from a federal, state, or
15 local governmental entity by institutions of purely public charity if the property is directly used for purely public
16 charitable purposes;
- 17 (j) evidence of debt secured by mortgages of record upon real or personal property in the state of
18 Montana;
- 19 (k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;
- 20 (l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or
21 nonprofit corporation organized to furnish potable water to its members or customers for uses other than the
22 irrigation of agricultural land;
- 23 (m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive
24 of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore,
25 prospect, or dig for oil, gas, coal, or minerals;
- 26 (n) (i) property that is owned and used by a corporation or association organized and operated
27 exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with
28 physical or mental impairments that constitute or result in substantial impediments to employment and that is not
29 operated for gain or profit; and
30 (ii) property that is owned and used by an organization owning and operating facilities that are for the care

1 of the retired, aged, or chronically ill and that are not operated for gain or profit; and

2 (o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training
3 and practice for or competition in international sports and athletic events and that is not held or used for private
4 or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an organization
5 that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted
6 under the Montana Nonprofit Corporation Act.

7 (2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to
8 exemption may not be:

9 (A) operated for gain or profit;

10 (B) held under contract to operate, lease, or sell by a taxable individual;

11 (C) used or possessed exclusively by a taxable individual or entity; or

12 (D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

13 (ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must
14 be:

15 (A) set aside by tribal resolution and designated as park land, not to exceed 640 acres, or be designated
16 as a recreational facility; and

17 (B) open to the general public.

18 (b) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal
19 Internal Revenue Code:

20 (i) an ordained minister, priest, or rabbi;

21 (ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the
22 person has the authority to perform substantially all the religious duties of the church or denomination;

23 (iii) a member of a religious order who has taken a vow of poverty; or

24 (iv) a Christian Science practitioner.

25 (c) For the purposes of subsection (1)(i):

26 (i) the term "institutions of purely public charity" includes any organization that meets the following
27 requirements:

28 (A) The organization offers its charitable goods or services to persons without regard to race, religion,
29 creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal
30 Revenue Code, as amended.

1 (B) The organization accomplishes its activities through absolute gratuity or grants. However, the
2 organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public
3 performances or entertainment or by other similar types of fundraising activities.

4 (ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used
5 by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal
6 Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually
7 with the department a copy of its federal tax return reporting any unrelated business taxable income received by
8 the charity during the tax year, together with a statement indicating whether the exempt property was used to
9 generate any unrelated business taxable income.

10 (iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even
11 if the property must be improved before it can directly be used for its intended charitable purpose. If the property
12 is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the
13 property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property
14 is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property
15 shall pay an amount equal to the amount of the tax due that year times the number of years that the property was
16 tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed
17 by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed.
18 At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county
19 in which the property is located. The notice must indicate that an exemption pursuant to this section has been
20 granted. The notice must describe the penalty for default under this section and must specify that a default under
21 this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the
22 department.

23 (iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally
24 applied for after December 31, 2004. An application for exemption under this section must contain a legal
25 description of the property for which the exemption is requested.

26 (d) For the purposes of subsection (1)(k), the term "public museums, art galleries, zoos, and
27 observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property
28 for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real
29 and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary
30 for use in connection with the public display or observatory use. Unless the property is leased for a profit to a

1 governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property
2 owned by other persons is exempt if it is:

- 3 (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
4 (ii) held for future display; or
5 (iii) used to house or store a public display."
6

7 **Section 3.** Section 15-30-2366, MCA, is amended to read:

8 **"15-30-2366. Credit for expense of caring for certain elderly family members.** (1) There is a credit
9 against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of
10 a qualifying family member during the taxable year.

11 (2) A qualifying family member is an individual who:

- 12 (a) is related to the taxpayer by blood or marriage;
13 (b) (i) is at least 65 years of age; or
14 (ii) has been determined to be disabled by the social security administration; and
15 (c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married
16 individual for the taxable year.

17 (3) For purposes of this section, "family income" means, in the case of an individual who is not married,
18 the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the
19 gross income, including all nontaxable income, of the individual and the individual's spouse.

20 (4) Qualified elderly care expenses include:

21 (a) payments by the taxpayer for home health agency services, personal-care attendant services and
22 care in a long-term care facility, as defined in 50-5-101, that is licensed by the department of ~~public health and~~
23 ~~human services justice~~, homemaker services, adult day care, respite care, or health care equipment and supplies:

- 24 (i) provided to the qualifying family member;
25 (ii) provided by an organization or individual not related to the taxpayer or the qualifying family member;

26 and

- 27 (iii) not compensated for by insurance or otherwise;
28 (b) premiums paid for long-term care insurance coverage for a qualifying family member.

29 (5) The percentage amount of credit allowable under this section is:

- 30 (a) for a taxpayer whose adjusted gross income does not exceed \$25,000, 30% of qualified elderly care

1 expenses; or

2 (b) for a taxpayer whose adjusted gross income exceeds \$25,000, the greater of:

3 (i) 20% of qualified elderly care expenses; or

4 (ii) 30% of qualified elderly care expenses, less 1% for each \$2,000 or fraction of \$2,000 by which the
5 adjusted gross income of the taxpayer for the taxable year exceeds \$25,000.

6 (6) The dollar amount of credit allowable under this section is:

7 (a) reduced by \$1 for each dollar of the adjusted gross income over \$50,000 for a taxpayer whose
8 adjusted gross income exceeds \$50,000;

9 (b) limited to \$5,000 per qualifying family member in a taxable year and to \$10,000 total for two or more
10 family members in a taxable year;

11 (c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the
12 same qualified family member in a taxable year in the same proportion that their contributions bear to the total
13 qualified elderly care expenses paid by those taxpayers for that qualified family member.

14 (7) A deduction or credit is not allowed under any other provision of this chapter with respect to any
15 amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed
16 as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

17 (8) In the case of a married individual filing a separate return, the percentage amount of credit under
18 subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated
19 in those subsections."

20

21 **Section 4.** Section 15-60-101, MCA, is amended to read:

22 **"15-60-101. (Temporary) Definitions.** For purposes of this chapter, unless the context requires
23 otherwise, the following definitions apply:

24 (1) (a) "Bed day" means each 24-hour period that a resident of a nursing facility is present in the facility
25 and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the
26 resident is on temporary leave from the facility.

27 (b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of
28 payment. The term also includes the day of a resident's admission to a nursing facility and the day of the
29 resident's death, even though the resident is present for less than a 24-hour period on these days.

30 (2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September

1 30, or December 31.

2 (3) "Department" means the department of revenue.

3 (4) "Nursing facility" or "facility" means a health care facility licensed by the department of ~~public health~~
4 ~~and human services~~ justice as a nursing facility to provide skilled nursing care or intermediate nursing care. The
5 term includes:

6 (a) nursing facilities, whether they are:

7 (i) operated as nonprofit or for-profit facilities;

8 (ii) freestanding or part of another health care facility; or

9 (iii) publicly or privately operated; and

10 (b) the Montana mental health nursing care center provided for in 53-21-411.

11 (5) "Report" means the report of bed days required in 15-60-201.

12 (6) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are
13 defined in 50-5-101.

14 (7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as
15 provided in 15-60-102. (Void on occurrence of contingency--sec. 18, Ch. 746, L. 1991--see chapter compiler's
16 comment.)"

17

18 **Section 5.** Section 15-60-201, MCA, is amended to read:

19 **"15-60-201. (Temporary) Reporting and collection of fee.** (1) A nursing facility shall report to the
20 department of revenue, following the end of each calendar quarter, the number of bed days in the facility during
21 the quarter. The report must be in the form prescribed by the department and is due on or before the last day of
22 the month following the close of each calendar quarter. The report must be accompanied by a payment in an
23 amount equal to the fee required to be paid under 15-60-102.

24 (2) The department of ~~public health and human services~~ justice shall provide the department at the end
25 of each calendar quarter with a list of facilities as defined in 15-60-101(4). (Void on occurrence of
26 contingency--sec. 18, Ch. 746, L. 1991--see chapter compiler's comment.)"

27

28 **Section 6.** Section 15-66-201, MCA, is amended to read:

29 **"15-66-201. (Temporary) Reporting and collection of fee.** (1) On or before January 31 of each year,
30 a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding

1 year beginning January 1 and ending December 31. The report must be in the form prescribed by the department.
 2 The report must be accompanied by a payment in an amount equal to the fee required to be paid under
 3 15-66-102.

4 (2) On or before January 31 of each year, the department of ~~public health and human services~~ justice
 5 shall provide the department with a list of hospitals licensed and operating in the state during the preceding year
 6 beginning January 1 and ending December 31. (Void on occurrence of contingency--sec. 18, Ch. 390, L.
 7 2003--see chapter compiler's comment.)"

8

9 **Section 7.** Section 15-67-201, MCA, is amended to read:

10 **"15-67-201. (Temporary) Reporting, collection, and deposit of fee.** (1) An intermediate care facility
 11 shall report to the department, following the end of each calendar quarter, the facility's quarterly revenue and the
 12 number of resident bed days in the facility during the quarter. The report, in a form prescribed by the department,
 13 is due on or before the last day of the month following the close of each calendar quarter. The report must be
 14 accompanied by a payment in an amount equal to the utilization fee required to be paid under 15-67-102. The
 15 department shall deposit the utilization fee pursuant to 15-67-102(3).

16 (2) At the end of each calendar quarter, the department of ~~public health and human services~~ justice shall
 17 provide the department with a list of intermediate care facilities. (Void on occurrence of contingency--sec. 17, Ch.
 18 531, L. 2003--see chapter compiler's comment.)"

19

20 **Section 8.** Section 20-7-436, MCA, is amended to read:

21 **"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

22 (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

23 (i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and
 24 resulting treatment plan require in-house residential psychiatric care; and

25 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of
 26 the centers for medicare and medicaid services, or other comparable accreditation.

27 (b) The term does not include programs for children and youth for whom the treatment of chemical
 28 dependency is the primary reason for treatment.

29 (2) "Eligible child" means a Montana resident child or youth who is less than 19 years of age and who
 30 has an emotional problem that is so severe that the child or youth has been placed in a children's psychiatric

1 hospital or residential treatment facility for inpatient treatment of emotional problems.

2 (3) (a) "Residential treatment facility" means a facility in the state that:

3 (i) provides services for children or youth with emotional disturbances;

4 (ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years
5 of age;

6 (iii) is licensed by the department of ~~public health and human services~~ justice; and

7 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing
8 psychiatric services to individuals under 21 years of age; or

9 (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of
10 need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to
11 January 1, 1993.

12 (b) The term does not include programs for children and youth for whom the treatment of chemical
13 dependency is the primary reason for treatment."
14

15 **Section 9.** Section 20-9-311, MCA, is amended to read:

16 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average number
17 belonging (ANB) must be computed for each budget unit as follows:

18 (a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were
19 enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on
20 the first Monday in December of the prior school fiscal year and to a count of regularly enrolled pupils on the first
21 Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day,
22 and divide the sum by three; and

23 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved
24 pupil-instruction-related days for the current school fiscal year and divide by 180.

25 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related
26 days may be included in the calculation.

27 (3) When a school district has approval to operate less than the minimum aggregate hours under
28 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

29 (4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an
30 education program:

- 1 (i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time
2 enrollment;
- 3 (ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time
4 enrollment;
- 5 (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time
6 enrollment; and
- 7 (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.
- 8 (b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180
9 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.
- 10 (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on
11 the hours necessary and appropriate to provide the course within a regular classroom schedule.
- 12 (d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing
13 fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil
14 has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school
15 board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly
16 equivalent based on the hours of instruction ordinarily provided for the content over which the student has
17 demonstrated proficiency.
- 18 (e) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school,
19 program, or district may not be counted as more than one full-time pupil for ANB purposes.
- 20 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
21 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose
22 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
23 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
24 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
25 districts offering full-time kindergarten.
- 26 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days,
27 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes
28 attendance prior to the day of the enrollment count.
- 29 (7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB
30 calculations.

1 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a
2 district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the
3 district, except that:

4 (a) the ANB is calculated as a separate budget unit when:

5 (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town
6 located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled,
7 full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must
8 receive a basic entitlement for the school calculated separately from the other schools of the district;

9 (ii) a school of the district is located more than 20 miles from any other school of the district and
10 incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school
11 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school
12 calculated separately from the other schools of the district;

13 (iii) the superintendent of public instruction approves an application not to aggregate when conditions
14 exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any
15 other condition exists that would result in an unusual hardship to the pupils of the school if they were transported
16 to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately
17 for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the
18 other schools of the district; or

19 (iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and
20 the basic entitlements of the component districts must be calculated separately for a period of 3 years following
21 the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional
22 years as follows:

23 (A) 75% of the basic entitlement for the fourth year;

24 (B) 50% of the basic entitlement for the fifth year; and

25 (C) 25% of the basic entitlement for the sixth year.

26 (b) when a junior high school has been approved and accredited as a junior high school, all of the
27 regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for
28 ANB purposes;

29 (c) when a middle school has been approved and accredited, all pupils below the 7th grade must be
30 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high

1 school pupils for ANB purposes; or

2 (d) when a school has been designated as nonaccredited by the board of public education because of
3 failure to meet the board of public education's assurance and performance standards, the regularly enrolled,
4 full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation
5 purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE
6 funding program for the district.

7 (9) The district shall provide the superintendent of public instruction with semiannual reports of school
8 attendance, absence, and enrollment for regularly enrolled students, using a format determined by the
9 superintendent.

10 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program
11 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
12 only if the pupil is offered access to the complete range of educational services for the basic education program
13 required by the accreditation standards adopted by the board of public education.

14 (b) Access to school programs and services for a student placed by the trustees in a private program
15 for special education may be limited to the programs and services specified in an approved individual education
16 plan supervised by the district.

17 (c) Access to school programs and services for a student who is incarcerated in a facility, other than a
18 youth detention center, may be limited to the programs and services provided by the district at district expense
19 under an agreement with the incarcerating facility.

20 (d) This subsection (10) may not be construed to require a school district to offer access to activities
21 governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a
22 pupil who is not otherwise eligible under the rules of the organization.

23 (11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this
24 title and who is:

25 (a) a resident of the district or a nonresident student admitted by trustees under a student attendance
26 agreement and who is attending a school of the district;

27 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving
28 individualized educational services supervised by the district, at district expense, at a home or facility that does
29 not offer an educational program;

30 (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention

1 center, and who is receiving individualized educational services supervised by the district, at district expense, at
2 a home or facility that does not offer an educational program;

3 (d) receiving special education and related services, other than day treatment, under a placement by the
4 trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's
5 expense under an approved individual education plan supervised by the district;

6 (e) participating in the running start program at district expense under 20-9-706;

7 (f) receiving educational services, provided by the district, using appropriately licensed district staff at
8 a private residential program or private residential facility licensed by the department of ~~public health and human~~
9 ~~services~~ justice;

10 (g) enrolled in an educational program or course provided at district expense using electronic or offsite
11 delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
12 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite
13 instructional setting with the approval of the trustees of the district. The pupil shall:

14 (i) meet the residency requirements for that district as provided in 1-1-215;

15 (ii) live in the district and must be eligible for educational services under the Individuals With Disabilities
16 Education Act or under 29 U.S.C. 794; or

17 (iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

18 (h) a resident of the district attending the Montana youth challenge program or a Montana job corps
19 program under an interlocal agreement with the district under 20-9-707.

20 (12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge
21 program participant as half-time enrollment.

22 (13) (a) For an elementary or high school district that has been in existence for 3 years or more, the
23 district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated
24 using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever
25 generates the greatest maximum general fund budget.

26 (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund
27 budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and
28 high school programs pursuant to subsection (13)(a) and then combined.

29 (14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

30 (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the

1 previous 2 school fiscal years; and

2 (b) dividing the sum calculated under subsection (14)(a) by three."

3

4 **Section 10.** Section 33-22-702, MCA, is amended to read:

5 **"33-22-702. Definitions.** For purposes of this part, the following definitions apply:

6 (1) "Chemical dependency treatment center" means a treatment facility that:

7 (a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment
8 plan approved and monitored by a physician or addiction counselor licensed by the state; and

9 (b) is licensed or approved as a treatment center by the department of ~~public health and human services~~
10 justice under 53-24-208 or is licensed or approved by the state where the facility is located.

11 (2) "Inpatient benefits" are as set forth in 33-22-705.

12 (3) "Mental health treatment center" means a treatment facility organized to provide care and treatment
13 for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and
14 monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist,
15 and a treatment facility that is:

16 (a) licensed as a mental health treatment center by the state;

17 (b) funded or eligible for funding under federal or state law; or

18 (c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

19 (4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that
20 occurs in a person and that is associated with:

21 (i) present distress or a painful symptom;

22 (ii) a disability or impairment in one or more areas of functioning; or

23 (iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

24 (b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological
25 dysfunction in a person.

26 (c) Mental illness does not include:

27 (i) a developmental disorder;

28 (ii) a speech disorder;

29 (iii) a psychoactive substance use disorder;

30 (iv) an eating disorder, except for bulimia and anorexia nervosa;

- 1 (v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or
 2 (vi) a severe mental illness as provided in 33-22-706.
 3 (5) "Outpatient benefits" are as set forth in 33-22-705."
 4

5 **Section 11.** Section 33-22-705, MCA, is amended to read:

6 **"33-22-705. Inpatient and outpatient benefits.** (1) "Inpatient benefits" are benefits payable for charges
 7 made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness,
 8 alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to
 9 major medical policies or contracts, also includes those benefits payable for charges made by a physician for the
 10 necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while
 11 confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility
 12 must be in a chemical dependency treatment center that is approved by the department of ~~public health and~~
 13 ~~human services~~ justice under 53-24-208. Inpatient benefits include payment for medically monitored and
 14 medically managed intensive inpatient services and clinically managed high-intensity residential services.

15 (2) "Outpatient benefits" are benefits payable for:

16 (a) reasonable charges made by a hospital for the necessary care and treatment of mental illness,
 17 alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

18 (b) reasonable charges for services rendered or prescribed by a physician for the necessary care and
 19 treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as
 20 an inpatient;

21 (c) reasonable charges made by a mental health or chemical dependency treatment center for the
 22 necessary care and treatment of a covered person provided in the treatment center. The chemical dependency
 23 treatment center must be approved by the department of ~~public health and human services~~ justice under
 24 53-24-208.

25 (d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed
 26 professional counselor, licensed social worker, or addiction counselor licensed by the department of labor and
 27 industry under Title 37, chapter 35."
 28

29 **Section 12.** Section 33-36-305, MCA, is amended to read:

30 **"33-36-305. Confidentiality of health care and quality assurance records -- disclosure.** (1) Except

1 as provided in subsection (2), the following information held by a health carrier offering a closed plan or a
2 combination plan is confidential and may not be disclosed by the carrier to a person:

3 (a) information pertaining to the diagnosis, treatment, or health of a covered person, regardless of
4 whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable
5 form;

6 (b) information considered by a quality assurance program and the records of its actions, including
7 testimony of a member of a quality committee, of an officer, director, or other member of a health carrier or its
8 staff engaged in assisting the quality committee or engaged in the health carrier's quality assessment, quality
9 improvement, or quality assurance activities, or of any person assisting or furnishing information to the quality
10 committee.

11 (2) The information specified in subsection (1) may be disclosed:

12 (a) as allowed by Title 33, chapter 19;

13 (b) as required in proceedings before the commissioner, a professional or occupational licensing board
14 provided in Title 37, or the department of justice pursuant to Title 50, chapter 5, part 2;

15 (c) in an appeal, if an appeal is permitted, from a quality committee's findings or recommendations; or

16 (d) as otherwise required by law or court order, including a judicial or administrative subpoena.

17 (3) Information specified in subsection (1) identifying:

18 (a) the provider may also be disclosed upon a written, dated, and signed approval of the provider if the
19 information does not identify the covered person;

20 (b) the covered person may also be disclosed upon a written, dated, and signed approval of the covered
21 person or of the parent or guardian of a covered person if the covered person is a minor and if the information
22 does not identify the provider;

23 (c) neither the provider nor the covered person may also be disclosed upon request for use for statistical
24 purposes only."
25

26 **Section 13.** Section 45-5-624, MCA, is amended to read:

27 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference**
28 **with sentence or court order.** (1) A person under 21 years of age commits the offense of possession of an
29 intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating
30 substance. A person may not be arrested for or charged with the offense solely because the person was at a

1 place where other persons were possessing or consuming alcoholic beverages. A person does not commit the
2 offense if the person consumes or gains possession of an alcoholic beverage because it was lawfully supplied
3 to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic
4 beverages.

5 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age
6 who is convicted under this section:

7 (i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

8 (A) shall be ordered to perform 20 hours of community service;

9 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
10 pay all costs of participation in a community-based substance abuse information course that meets the
11 requirements of subsection (9), if one is available; and

12 (C) if the person has a driver's license, must have the license confiscated by the court for 30 days,
13 except as provided in subsection (2)(b);

14 (ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

15 (A) shall be ordered to perform 40 hours of community service;

16 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
17 pay all costs of participation in a community-based substance abuse information course that meets the
18 requirements of subsection (9), if one is available;

19 (C) if the person has a driver's license, must have the license confiscated by the court for 6 months,
20 except as provided in subsection (2)(b); and

21 (D) shall be required to complete a chemical dependency assessment and treatment, if recommended,
22 as provided in subsection (8);

23 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
24 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents
25 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance
26 abuse information course that meets the requirements of subsection (9), if one is available, and shall be required
27 to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8).
28 If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in
29 subsection (2)(b).

30 (b) If the convicted person fails to complete the community-based substance abuse course and has a

1 driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second
2 offense, and 12 months for a third or subsequent offense.

3 (c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection
4 (2)(b).

5 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
6 substance:

7 (a) for a first offense:

8 (i) shall be fined an amount not less than \$100 or more than \$300;

9 (ii) shall be ordered to perform 20 hours of community service; and

10 (iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse
11 information course that meets the requirements of subsection (9);

12 (b) for a second offense:

13 (i) shall be fined an amount not less than \$200 or more than \$600;

14 (ii) shall be ordered to perform 40 hours of community service; and

15 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
16 program that meets the requirements of subsection (9), which may, in the court's discretion and upon
17 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

18 (c) for a third or subsequent offense:

19 (i) shall be fined an amount not less than \$300 or more than \$900;

20 (ii) shall be ordered to perform 60 hours of community service;

21 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
22 program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon
23 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

24 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

25 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance
26 if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase
27 an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age
28 at the time that the offense was committed and may be ordered to perform community service.

29 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18
30 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure

1 to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need
2 of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

3 (6) A person commits the offense of interference with a sentence or court order if the person purposely
4 or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court
5 disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or
6 imprisoned in the county jail for 10 days, or both.

7 (7) A conviction or youth court adjudication under this section must be reported by the court to the
8 department of public health and human services if treatment is ordered under subsection (8).

9 (8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance
10 shall be ordered to complete a chemical dependency assessment.

11 (b) The assessment must be completed at a treatment program that meets the requirements of
12 subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of
13 the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay
14 the cost of the assessment and any resulting treatment.

15 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
16 recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with
17 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
18 addiction counselor or program that meets the requirements of subsection (9).

19 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or
20 both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules
21 adopted by the department of public health and human services. Upon the determination, the court shall order
22 the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order
23 an appropriate level of treatment based upon the determination of one of the counselors.

24 (e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify
25 the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to
26 attend the treatment program, the counselor shall notify the court of the failure.

27 (f) The court shall report to the department of public health and human services the name of any person
28 who is convicted under this section. The department of public health and human services shall maintain a list of
29 those persons who have been convicted under this section. This list must be made available upon request to
30 peace officers and to any court.

1 (9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B),
2 (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

3 (i) approved by the department of ~~public health and human services~~ justice under 53-24-208 or by a
4 court or provided under a contract with the department of corrections; or

5 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
6 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
7 chemical dependency services.

8 (b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at
9 an alcohol treatment program:

10 (i) approved by the department of ~~public health and human services~~ justice under 53-24-208 or by a
11 court or provided under a contract with the department of corrections; or

12 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
13 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
14 chemical dependency services.

15 (c) A chemical dependency assessment required under subsection (8) must be completed at a treatment
16 program:

17 (i) approved by the department of ~~public health and human services~~ justice under 53-24-208 or by a
18 court or provided under a contract with the department of corrections; or

19 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
20 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
21 chemical dependency services.

22 (10) Information provided or statements made by a person under 21 years of age to a health care
23 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
24 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
25 extends to a person who helps the victim obtain medical or other assistance or report the offense to law
26 enforcement personnel. (See compiler's comments for contingent termination of certain text.)"

27

28 **Section 14.** Section 45-9-208, MCA, is amended to read:

29 **"45-9-208. Mandatory dangerous drug information course.** A person who is convicted of an offense
30 under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall,

1 in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course
2 offered by a chemical dependency facility approved by the department of ~~public health and human services~~
3 justice under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person
4 shall undergo chemical dependency treatment if a licensed addiction counselor working with the person
5 recommends treatment."
6

7 **Section 15.** Section 50-5-101, MCA, is amended to read:

8 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates
9 otherwise, the following definitions apply:

10 (1) "Accreditation" means a designation of approval.

11 (2) "Accreditation association for ambulatory health care" means the organization nationally recognized
12 by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation
13 status to the outpatient centers for surgical services that it finds meet its standards and requirements.

14 (3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's
15 life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

16 (4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that
17 provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that
18 does not provide overnight care.

19 (5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided
20 in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are
21 not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full
22 guardianship of the owner or manager.

23 (b) As used in this subsection (5), the following definitions apply:

24 (i) "Aged person" means a person as defined by department rule as aged.

25 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult
26 so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available
27 to meet those basic needs.

28 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department
29 rule as disabled.

30 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such

1 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
2 administration.

3 (B) The term does not include the administration of prescriptive medications.

4 (6) "Affected person" means an applicant for a certificate of need, a health care facility located in the
5 geographic area affected by the application, an agency that establishes rates for health care facilities, or a
6 third-party payer who reimburses health care facilities in the area affected by the proposal.

7 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal
8 care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related
9 services.

10 (8) "Capital expenditure" means:

11 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
12 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

13 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any
14 other property of value had changed hands.

15 (9) "Certificate of need" means a written authorization by the department for a person to proceed with
16 a proposal subject to 50-5-301.

17 (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
18 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
19 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
20 welfare, or safety.

21 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
22 radioassay, cytological, immunohematological, pathological, or other examination of materials derived from
23 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease
24 or assessment of a medical condition.

25 (12) "College of American pathologists" means the organization nationally recognized by that name that
26 surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards
27 and requirements.

28 (13) "Commission on accreditation of rehabilitation facilities" means the organization nationally
29 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
30 to a rehabilitation facility that it finds meets its standards and requirements.

1 (14) "Comparative review" means a joint review of two or more certificate of need applications that are
2 determined by the department to be competitive in that the granting of a certificate of need to one of the
3 applicants would substantially prejudice the department's review of the other applications.

4 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
5 persons who require supportive services and housing.

6 (16) "Construction" means the physical erection of a health care facility and any stage of the physical
7 erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

8 (17) "Council on accreditation" means the organization nationally recognized by that name that surveys
9 behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and
10 mental health centers upon their requests and grants accreditation status to programs and facilities that it finds
11 meet its standards and requirements.

12 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
13 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
14 50-5-233.

15 (19) "Department" means the department of ~~public health and human services~~ justice provided for in
16 ~~2-15-2204~~ 2-15-2001.

17 (20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys
18 hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and
19 requirements.

20 (21) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases
21 and includes freestanding hemodialysis units.

22 (22) "Federal acts" means federal statutes for the construction of health care facilities.

23 (23) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision
24 of the state, or an agency of a political subdivision.

25 (24) "Healthcare facilities accreditation program" means the program nationally recognized by that name
26 that surveys health care facilities upon their requests and grants accreditation status to a health care facility that
27 it finds meets its standards and requirements.

28 (25) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private
29 or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to
30 provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The

1 term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home
2 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
3 intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers,
4 outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care
5 facilities, and residential treatment facilities.

6 (b) The term does not include offices of private physicians, dentists, or other physical or mental health
7 care workers regulated under Title 37, including licensed addiction counselors.

8 (26) "Home health agency" means a public agency or private organization or subdivision of the agency
9 or organization that is engaged in providing home health services to individuals in the places where they live.
10 Home health services must include the services of a licensed registered nurse and at least one other therapeutic
11 service and may include additional support services.

12 (27) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
13 services.

14 (28) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral
15 medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services
16 include an educational component for the patient, the patient's caregiver, or the patient's family member.

17 (29) "Hospice" means a coordinated program of home and inpatient health care that provides or
18 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
19 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages
20 of illness and dying and that includes formal bereavement programs as an essential component. The term
21 includes:

22 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that
23 meets all medicare certification regulations for freestanding inpatient hospice facilities; and

24 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that
25 can house three or more hospice patients.

26 (30) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services
27 for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as
28 otherwise provided by law, services provided must include medical personnel available to provide emergency
29 care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has
30 an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and

1 provides 24-hour nursing care by licensed registered nurses. The term includes:

2 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
3 tubercular patients; and

4 (ii) specialty hospitals.

5 (b) The term does not include critical access hospitals.

6 (c) The emergency care requirement for a hospital that specializes in providing health services for
7 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
8 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed
9 registered nurses.

10 (31) "Infirmarium" means a facility located in a university, college, government institution, or industry for the
11 treatment of the sick or injured, with the following subdefinitions:

12 (a) an "infirmarium--A" provides outpatient and inpatient care;

13 (b) an "infirmarium--B" provides outpatient care only.

14 (32) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility
15 that provides intermediate developmental disability care for two or more persons.

16 (b) The term does not include community homes for persons with developmental disabilities that are
17 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
18 52-4-203.

19 (33) "Intermediate developmental disability care" means the provision of intermediate nursing care
20 services, health-related services, and social services for persons with a developmental disability, as defined in
21 53-20-102, or for persons with related problems.

22 (34) "Intermediate nursing care" means the provision of nursing care services, health-related services,
23 and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

24 (35) "Licensed health care professional" means a licensed physician, physician assistant, advanced
25 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
26 department of labor and industry.

27 (36) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,
28 residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more
29 individuals or that provides personal care.

30 (b) The term does not include community homes for persons with developmental disabilities licensed

1 under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care
2 facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations
3 providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult
4 correctional facilities operating under the authority of the department of corrections.

5 (37) "Medical assistance facility" means a facility that meets both of the following:

6 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
7 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless
8 a longer period is required because transfer to a hospital is precluded because of inclement weather or
9 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
10 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
11 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
12 of the individual.

13 (b) either is located in a county with fewer than six residents a square mile or is located more than 35
14 road miles from the nearest hospital.

15 (38) "Mental health center" means a facility providing services for the prevention or diagnosis of mental
16 illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
17 combination of these services.

18 (39) "Nonprofit health care facility" means a health care facility owned or operated by one or more
19 nonprofit corporations or associations.

20 (40) "Offer" means the representation by a health care facility that it can provide specific health services.

21 (41) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
22 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
23 of a youth and that:

24 (i) serves either adjudicated or nonadjudicated youth;

25 (ii) charges a fee for its services; and

26 (iii) provides all or part of its services in the outdoors.

27 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts,
28 4-H clubs, or other similar organizations.

29 (42) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed
30 physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for

1 surgical services.

2 (43) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization
3 that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and
4 that may include recovery care beds.

5 (44) "Patient" means an individual obtaining services, including skilled nursing care, from a health care
6 facility.

7 (45) "Person" means an individual, firm, partnership, association, organization, agency, institution,
8 corporation, trust, estate, or governmental unit, whether organized for profit or not.

9 (46) "Personal care" means the provision of services and care for residents who need some assistance
10 in performing the activities of daily living.

11 (47) "Practitioner" means an individual licensed by the department of labor and industry who has
12 assessment, admission, and prescription authority.

13 (48) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours
14 by a patient recovering from surgery or other treatment.

15 (49) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the
16 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological
17 and social services, or vocational evaluation and training or any combination of these services and in which the
18 major portion of the services is furnished within the facility.

19 (50) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

20 (51) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
21 living facility, or a retirement home.

22 (52) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment
23 facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral
24 dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's
25 condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge
26 to less restrictive levels of care at the earliest possible time.

27 (53) "Residential treatment facility" means a facility operated for the primary purpose of providing
28 residential psychiatric care to individuals under 21 years of age.

29 (54) "Retirement home" means a building or buildings in which separate living accommodations are
30 rented or leased to individuals who use those accommodations as their primary residence.

1 (55) "Skilled nursing care" means the provision of nursing care services, health-related services, and
2 social services under the supervision of a licensed registered nurse on a 24-hour basis.

3 (56) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,
4 care, or treatment of one or more of the following categories:

- 5 (i) patients with a cardiac condition;
- 6 (ii) patients with an orthopedic condition;
- 7 (iii) patients undergoing a surgical procedure; or
- 8 (iv) patients treated for cancer-related diseases and receiving oncology services.

9 (b) For purposes of this subsection (56), a specialty hospital may provide other services for medical
10 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
11 if the care encompasses 35% or less of the hospital services.

12 (c) The term "specialty hospital" does not include:

- 13 (i) psychiatric hospitals;
- 14 (ii) rehabilitation hospitals;
- 15 (iii) children's hospitals;
- 16 (iv) long-term care hospitals; or
- 17 (v) critical access hospitals.

18 (57) "State health care facilities plan" means the plan prepared by the department of public health and
19 human services to project the need for health care facilities within Montana and approved by the governor and
20 a statewide health coordinating council appointed by the director of the department.

21 (58) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute
22 care or extended skilled nursing care to a patient.

23 (59) "The joint commission" means the organization nationally recognized by that name that surveys
24 health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets
25 its standards and requirements."

26

27 **Section 16.** Section 50-5-115, MCA, is amended to read:

28 **"50-5-115. Receiverships.** (1) If receivership has not already been instituted under medicaid or
29 medicare, upon notice to the facility, the department may file a complaint in district court for receivership under
30 any of the following conditions in addition to applicable conditions listed in 27-20-102:

- 1 (a) a facility is operating without a license and residents are in danger of serious physical or mental harm;
- 2 (b) a facility intending to close has not made arrangements within 30 days before closure for the orderly
- 3 transfer of residents;
- 4 (c) a facility is abandoned by an owner; or
- 5 (d) a life threatening situation exists for the residents of the facility.
- 6 (2) If the department believes ~~or has received notice from the department of justice~~ that there is an
- 7 emergency that presents or might present an immediate and serious threat to the health or safety of patients or
- 8 residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department.
- 9 If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility
- 10 within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within
- 11 10 days of issuance of the order to determine whether the order will be continued.
- 12 (3) The department shall maintain a list of persons qualified to act as receivers.
- 13 (4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20,
- 14 parts 2 and 3.
- 15 (5) Whenever possible, receivers must be paid from the income of the facility. However, receivers may
- 16 be paid from the patient protection account provided for in 50-5-232. The court shall direct the amount of
- 17 payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made
- 18 to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to
- 19 discharge any obligation of the entity making the payments owed to the facility.
- 20 (6) The powers and duties of the receiver include:
- 21 (a) the duty to protect the health, welfare, and safety of the residents;
- 22 (b) the power to hire, discipline, and fire staff;
- 23 (c) the power to collect debts due to the facility;
- 24 (d) the power to settle labor disputes;
- 25 (e) the power to petition the court to set aside unreasonable contracts or leases entered into by the
- 26 facility management;
- 27 (f) the power to make capital investments in the facility with court approval; and
- 28 (g) all other powers granted receivers by 27-20-302."
- 29

30 **Section 17.** Section 50-5-1103, MCA, is amended to read:

1 **"50-5-1103. Definitions.** As used in this part, the following definitions apply:

2 (1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37,
3 chapter 9, and who administers, manages, or supervises a long-term care facility.

4 (2) "Authorized representative" means:

5 (a) a person who has a general power of attorney for a resident;

6 (b) a person appointed by a court to manage the personal or financial affairs of a resident;

7 (c) a representative payee;

8 (d) a resident's next of kin; or

9 (e) a sponsoring agency.

10 (3) "Department" means the department of ~~public health and human services~~ justice provided for in
11 ~~2-15-2204~~ 2-15-2001.

12 (4) "Facility" or "long-term care facility" means a facility or part of a facility licensed under Title 50, chapter
13 5, to provide skilled nursing care, intermediate nursing care, or personal care.

14 (5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C.
15 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

16 (6) "Resident" means a person who lives in a long-term care facility."

17

18 **Section 18.** Section 50-5-1202, MCA, is amended to read:

19 **"50-5-1202. Definitions.** As used in this part, the following definitions apply:

20 (1) "Department" means the department of ~~public health and human services~~ justice provided for in
21 ~~2-15-2204~~ 2-15-2001.

22 (2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate
23 nursing care or that is an assisted living facility, as defined in 50-5-101.

24 (3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or
25 psychological need expressed by the patient.

26 (4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.

27 (5) "Resident" means a person who lives in a long-term care facility.

28 (6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

29 (b) The term does not include protective restraints as defined in 21 CFR 880.6760."

30

1 **Section 19.** Section 50-8-101, MCA, is amended to read:

2 **"50-8-101. Definitions.** As used in this part, the following definitions apply:

3 (1) "Department" means the department of ~~public health and human services~~ justice provided for in
4 ~~2-15-2204~~ 2-15-2001.

5 (2) "Facility" means:

6 (a) nonmedical facilities including:

7 (i) mental health transitional living facilities; and

8 (ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or
9 emergency detoxification;

10 (b) community homes for persons with developmental disabilities, community homes for physically
11 disabled persons, and adult foster family care homes;

12 (c) youth care facilities;

13 (d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

14 (e) health care facilities or services, including hospitals, skilled and intermediate nursing home services,
15 and intermediate care nursing home services for the intellectually disabled;

16 (f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home
17 health agencies; and

18 (g) assisted living facilities.

19 (3) "Inspecting authority" means the department or agency authorized by statute to perform a given
20 inspection necessary for certification for licensure.

21 (4) "Licensing agency" means the agency that is authorized by statute to issue the license."
22

23 **Section 20.** Section 52-1-103, MCA, is amended to read:

24 **"52-1-103. Powers and duties of department.** The department shall:

25 (1) administer and supervise all forms of child and adult protective services;

26 (2) act as the lead agency in coordinating and planning services to children with multiagency service
27 needs;

28 (3) establish a system of councils at the state and local levels to make recommendations and to advise
29 the department on issues, including children's issues;

30 (4) provide the following functions, as necessary, for youth in need of care:

- 1 (a) intake, investigation, case management, and client supervision;
 2 (b) placement in youth care facilities;
 3 (c) contracting for necessary services;
 4 (d) protective services day care; and
 5 (e) adoption;
 6 (5) register or license ~~youth care facilities, child-placing agencies, day-care facilities, community homes~~
 7 ~~for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care~~
 8 ~~facilities;~~
 9 (6) act as lead agency in implementing and coordinating child-care programs and services under the
 10 Montana Child Care Act;
 11 (7) administer the Interstate Compact for the Placement of Children;
 12 (8) (a) administer child abuse prevention services funded through child abuse grants and the Montana
 13 children's trust fund provided for in Title 52, chapter 7, part 1; and
 14 (b) administer elder abuse prevention services;
 15 (9) develop a statewide youth services and resources plan that takes into consideration local needs;
 16 (10) administer services to the aged;
 17 (11) provide consultant services to:
 18 (a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and
 19 (b) youth care facilities;
 20 (12) use the staff and services of other state agencies and units of the Montana university system, within
 21 their respective statutory functions, to carry out its functions under this title;
 22 (13) contract, as necessary, for administration of child and adult protection services for each county; and
 23 (14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

- 24
 25 **Section 21.** Section 52-2-603, MCA, is amended to read:
 26 **"52-2-603. Powers and duties of department.** (1) The department shall:
 27 (a) administer all state and federal funds allocated to the department for youth foster homes, kinship
 28 foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living
 29 programs for youth in need of care, as defined in 41-3-102;
 30 (b) exercise licensing authority over all ~~youth foster homes, kinship foster homes, youth group homes,~~

- 1 ~~youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;~~
 2 (c) collect and disseminate information relating to youth in need of care;
 3 (d) provide for training of program personnel delivering services;
 4 ~~(e) in cooperation with youth care facility providers, develop and implement standards for youth care~~
 5 ~~facilities;~~
 6 ~~(f)~~(e) maintain adequate data on placements it funds in order to keep the legislature properly informed
 7 of the following:
 8 (i) the number of youth in need of care in out-of-home care facilities;
 9 (ii) the cost per facility for services rendered;
 10 (iii) the type and level of care of services provided by each facility;
 11 (iv) a profile of out-of-home care placements by level of care; and
 12 (v) a profile of public institutional placements;
 13 ~~(g)~~(f) administer all funds allocated to the department for residential alcohol and drug abuse treatment
 14 for indigent youth in need of care, indigent youth in need of intervention, and indigent delinquent youth who
 15 require treatment; and
 16 ~~(h)~~(g) provide reimbursement for mental health outpatient counseling services for persons who
 17 experience the death of a foster child while providing substitute care to the foster child in a youth care facility.
 18 (2) The department may:
 19 (a) enter into contracts with nonprofit corporations or associations or private organizations to provide
 20 substitute care for youth in need of care in youth care facilities;
 21 (b) accept gifts, grants, and donations of money and property from public and private sources to initiate
 22 and maintain community-based services to youth;
 23 (c) adopt rules to carry out the administration and purposes of this part.
 24 (3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster
 25 care homes and youth group homes for youth who are in the physical or legal custody of the department and who
 26 need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be
 27 provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by
 28 the department, payments under this subsection may continue for a youth up to 21 years of age who remains in
 29 substitute care. Payments under this subsection may not exceed appropriations for the purposes of this
 30 subsection.

1 (4) The department may provide a subsidy for a guardianship of a child who is in the department's legal
2 custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with
3 eligibility criteria established by department rule."
4

5 **Section 22.** Section 52-2-621, MCA, is amended to read:

6 **"52-2-621. License required.** (1) A person may not maintain or operate a youth care facility for any child
7 or children within the meaning of this part without first securing a license from the department of justice.

8 (2) A kinship care provider who provides unlicensed care for a child placed pursuant to the legal authority
9 of the department must receive approval in writing from the department of justice.

10 (3) An extended family member, as defined by the department, who provides unlicensed care for a youth
11 who receives services provided through the department's developmental disabilities program, mental health
12 program, or medicaid home and community-based services waiver program must receive approval in writing from
13 the department of justice.

14 (4) The department of justice may not charge a fee for a license or approval granted under this section."
15

16 **Section 23.** Section 52-2-622, MCA, is amended to read:

17 **"52-2-622. Issuance of license -- authority of issuing agency -- rules.** (1) The department of justice
18 provided for in 2-15-2001 may issue licenses to persons operating youth care facilities or grant approval of kinship
19 or extended family care providers and prescribe the conditions upon which licenses and approvals may be issued.
20 The department of justice may make rules necessary for the licensure or approval, operation, and regulation of
21 those facilities consistent with the welfare of the residents.

22 (2) The department of justice may inspect all licensed facilities or approved homes and, as appropriate,
23 undertake action, including but not limited to the revocation of licenses and approvals.

24 (3) The person providing care in the facilities or homes shall give the department or the department of
25 justice any information that may be required and afford the department or the department of justice every
26 reasonable opportunity for observing the operation of the facilities or homes.

27 (4) The department of justice shall require an applicant for a youth foster home license to submit to a
28 criminal and child protection background check, which must include information pertaining to criminal convictions,
29 reports of domestic violence, and substantiated child abuse or neglect of children. The department of justice shall
30 require a criminal background investigation of each applicant by means of a fingerprint check by the ~~Montana~~

1 department of justice and the federal bureau of investigation."
2

3 **Section 24.** Section 52-4-202, MCA, is amended to read:

4 **"52-4-202. Definitions.** As used in 52-4-201 through 52-4-205, the following definitions apply:

5 (1) "Community home for persons with severe disabilities" means a family-oriented residence that is
6 designed to provide residential services for two to eight persons with severe disabilities and that does not provide
7 skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate
8 nursing care by third-person providers.

9 (2) "Department" means the department of ~~public health and human services~~ justice provided for in
10 ~~2-15-2204~~ 2-15-2001.

11 (3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII
12 of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

13 (4) "Severe disability" means a permanent disability that substantially limits major life activity, such as
14 walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be
15 diagnosed by a physician. The term includes the condition of a person with severe disabilities as defined in
16 53-19-102."
17

18 **Section 25.** Section 52-4-204, MCA, is amended to read:

19 **"52-4-204. Health and safety standards.** (1) A community home for persons with severe disabilities
20 must be certified annually for fire and life safety by the department of justice. ~~The department of justice shall notify~~
21 ~~the department whenever a community home has been certified or refused certification.~~

22 (2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure
23 compliance with health and safety standards. If for any reason the local authority cannot complete the inspection
24 in a timely manner, the department of public health and human services may make the inspection to ensure
25 compliance with the standards.

26 (b) The inspecting health officer shall notify the department of justice whether a community home is or
27 is not in compliance with applicable standards.

28 (c) A reasonable fee may be charged by health authorities conducting compliance inspections."
29

30 **Section 26.** Section 52-4-205, MCA, is amended to read:

1 **"52-4-205. Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern
 2 administration, operation, and health and safety requirements for community homes for persons with severe
 3 disabilities in order to protect rights of residents. The department shall provide for temporary and provisional
 4 licensing.

5 (2) The state fire prevention and investigation section of the department of justice shall provide advice
 6 and recommendations to the department concerning licensing requirements for health and safety."

7

8 **Section 27.** Section 52-8-101, MCA, is amended to read:

9 **"52-8-101. Definitions.** As used in this part, the following definitions apply:

10 (1) "Department" means the department of justice as provided in 2-15-2001.

11 ~~(+)(2)~~ "Person" includes any individual, partnership, voluntary association, or corporation.

12 ~~(2)(3)~~ "Placement activities" means any of the following:

13 (a) placement of a child for adoption or foster care;

14 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

15 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
 16 adoptive or foster parents.

17 ~~(3)(4)~~ "Soliciting" means to request, offer, promote, or refer, either directly or indirectly through
 18 correspondence, advertising, or other method, a potential adoptive or foster parent or couple, birth parent or
 19 parents, or placement of a child by a birth parent."

20

21 **Section 28.** Section 53-6-106, MCA, is amended to read:

22 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
 23 53-6-108, the following definitions apply:

24 (a) "Department" means the department of ~~public health and human services~~ justice provided for in
 25 2-15-2001.

26 (b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public health
 27 center as defined in 7-34-2102.

28 (2) The department may enter into agreements with appropriate federal agencies for the purpose of
 29 certifying health care facilities for the Montana medicaid program.

30 (3) The department may adopt rules as necessary to prescribe minimum standards for the maintenance

1 and operation of health care facilities. Standards for the quality of care provided by those facilities receiving
2 reimbursement under the Montana medicaid program must be consistent with those requirements imposed upon
3 health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., as may be amended,
4 and by the implementing regulations contained in Title 42 of the Code of Federal Regulations, as may be
5 amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition
6 to the authority granted to the department pursuant to Title 50, chapter 5.

7 (4) Standards adopted by the department may include but are not limited to requirements in the following
8 areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration,
9 admission policies, patient care planning, training, medication, health services, rehabilitation services, and social
10 services and activities."
11

12 **Section 29.** Section 53-6-107, MCA, is amended to read:

13 **"53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew an
14 agreement with a health care facility that has failed to meet the requirements for certification for or participation
15 in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable law. The On notification
16 by the department of justice that a health care facility has failed to meet the requirements for certification for or
17 participation in the Montana medicaid program, the department of public health and human services may also
18 impose sanctions in the form of denial of medicaid payments for new admissions or other penalties or sanctions,
19 as described in 53-6-111 or Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended,
20 and any implementing federal regulations.

21 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% a year, for
22 each day that a facility is substantially out of compliance with standards or participation requirements provided
23 by applicable state or federal laws, regulations, or rules, including but not limited to standards adopted by the
24 department under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected
25 by the department and may be applied to the protection of the health and property of residents of health care
26 facilities that the department finds deficient, including but not limited to payment for the costs of relocation of
27 residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement
28 of residents for personal funds lost.

29 (3) The department may appoint temporary management personnel to oversee the operation of the
30 facility and to ensure the health and safety of the facility's residents if there is a need for temporary management

1 because:

2 (a) an orderly closure of the facility is necessary; or

3 (b) improvements are being made to bring the facility into compliance with applicable standards.

4 (4) The department shall, in the case of an emergency, close the facility or transfer residents in the
5 facility to other facilities, or both."

6

7 **Section 30.** Section 53-6-109, MCA, is amended to read:

8 **"53-6-109. Consistent regulation of long-term care facilities -- rulemaking authority -- timeframes.**

9 (1) In order to provide more consistent regulation of long-term care facilities that provide intermediate and skilled
10 nursing care statewide, the department of justice provided for in 2-15-2001 shall adopt rules in consultation with
11 long-term care provider groups, the long-term care ombudsman, as described in 52-3-603, and appropriate
12 consumer groups that:

13 (a) define the following terms used in the survey and certification process for long-term care facilities that
14 provide intermediate and skilled nursing care:

15 (i) actual harm;

16 (ii) potential for more than minimal harm;

17 (iii) avoidable;

18 (iv) unavoidable; and

19 (v) immediate jeopardy;

20 (b) define an informal dispute resolution process to provide nursing homes with an opportunity to
21 respond to survey findings and deficiency citations that are believed to be made in error. The rules must be
22 consistent with the purpose of informal dispute resolution that is intended to give the provider an opportunity to
23 demonstrate that a deficiency has been applied in error or is a misjudgment of true facts. The objective of the
24 process is to avoid the imposition of unnecessary sanctions and to diminish the need for formal administrative
25 hearings with the state, as provided for in 53-6-108, or the federal government agencies that are responsible for
26 the enforcement of remedies. The process must provide for an objective review of the raised issues by an
27 individual who is independent of the survey process and who can evaluate the legal sufficiency of the findings
28 of the surveyors. The department shall provide a written determination of the outcome of the informal dispute
29 resolution process within 60 days from the date that the dispute is submitted to the individual conducting the
30 dispute resolution process. As used in this subsection (1)(b), "submitted" means that the provider and any other

1 party to the dispute have provided their final position statements or arguments to the individual conducting the
2 dispute resolution process, along with any supporting documents, within the time established by that individual.

3 (c) define standards for survey determinations in which the surveyors question the efficacy of orders for
4 drugs and treatments made by a resident's attending physician. The standards must recognize that a written
5 physician's order provides evidence of medical necessity and the appropriateness of the drugs and treatments
6 ordered, unless the survey agency alleges substandard practice by the physician. The standards must provide
7 for the reporting of any substandard practice of a physician to the board of medical examiners by the surveyors.
8 The standards must outline a facility's responsibilities in monitoring drugs and treatments ordered for residents
9 and for consulting with the attending physician as appropriate.

10 (2) The department shall inform long-term care facilities of the results of any survey, certification survey,
11 complaint survey, or postsurvey revisit within 10 working days of the last date of the survey on the form provided
12 by the centers for medicare and medicaid services for that purpose."

13

14 **Section 31.** Section 53-6-401, MCA, is amended to read:

15 **"53-6-401. Definitions.** As used in this part, the following definitions apply:

16 (1) "Department" means the department of public health and human services provided for in 2-15-2201.

17 (2) "Home and community-based services" means, as provided for in section 1915 of Title XIX of the
18 Social Security Act, 42 U.S.C. 1396n(c), and any regulations implementing that statute, long-term medical,
19 habilitative, rehabilitative, and other services provided in personal residences or in community settings and funded
20 by the department with medicaid money.

21 (3) "Level-of-care determination" means an assessment of a person and the resulting determination
22 establishing whether long-term care facility services to be provided to the person are appropriate to meet the
23 health care and related circumstances and needs of the person.

24 (4) "Long-term care facility" means a facility that is certified by the department of justice, as provided in
25 53-6-106, to provide skilled or intermediate nursing care services, including intermediate nursing care services
26 for persons with developmental disabilities or, for the purposes of implementation of medicaid-funded programs
27 of home and community-based services, that is recognized by the U.S. department of health and human services
28 to be an institutional setting from which persons may be diverted through the receipt of home and
29 community-based services.

30 (5) "Long-term care preadmission screening" means, in accordance with section 1919 of Title XIX of the

1 Social Security Act, 42 U.S.C. 1396r, a process conducted according to a specific set of criteria for determining
2 whether a person with intellectual disability or mental illness may be admitted to a long-term care facility.

3 (6) "Persons with disabilities or persons who are elderly" means, for purposes of establishing home and
4 community-based services, those categories of persons who are elderly and disabled as defined in accordance
5 with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."
6

7 **Section 32.** Section 53-19-102, MCA, is amended to read:

8 **"53-19-102. Definitions.** As used in this part, the following definitions apply:

9 (1) "Community home for persons with severe disabilities" means a facility licensed by the department
10 of justice, as provided for in 52-4-201 through 52-4-205.

11 (2) "Department" means the department of public health and human services established in 2-15-2201.

12 (3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII
13 of the federal Rehabilitation Act of 1973, 29 U.S.C. 796, et seq., as may be amended.

14 (4) "Live and function independently" means to have control over one's life based upon a choice between
15 acceptable options in a manner that minimizes reliance upon others for making decisions and conducting
16 activities of daily living.

17 (5) "Person with a severe disability" means the same as "individual with a severe disability" as defined
18 in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an
19 individual whose ability to function independently in family or community or whose ability to engage or continue
20 in employment is so limited by the severity of the physical or mental disability that the services provided under
21 this part are required in order for the individual to achieve a greater level of independence in functioning in family
22 or community or in engaging in or continuing in employment."
23

24 **Section 33.** Section 53-20-104, MCA, is amended to read:

25 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
26 independent board of inquiry and review established to ensure that the treatment of all persons committed to a
27 residential facility is humane and decent and meets the requirements set forth in this part.

28 (2) The board shall review all plans for experimental research or hazardous treatment procedures
29 involving persons committed to a residential facility to ensure that the research project is humane and not unduly
30 hazardous and that it complies with the principles of the statement on the use of human subjects for research of

1 the American association on mental deficiency and with the principles for research involving human subjects
2 required by the United States department of health and human services. An experimental research project
3 involving persons committed to a residential facility affected by this part may not be commenced unless it is
4 approved by the mental disabilities board of visitors.

5 (3) The board shall investigate all cases of alleged mistreatment of a resident.

6 (4) The board shall at least annually inspect every residential facility that is providing a course of
7 residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical
8 plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or
9 habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

10 (5) The board shall inspect the file of each person committed to a residential facility pursuant to this part
11 to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of
12 restraints, isolation, or other extraordinary measures.

13 (6) The board may assist a resident at a residential facility in resolving a grievance the resident may have
14 concerning the resident's commitment or course of treatment and habilitation in the facility.

15 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its
16 physical facilities or its treatment of a resident, it shall report its findings at once to the superintendent of the
17 facility and the ~~director of the department of public health and human services~~ attorney general. If appropriate,
18 after waiting a reasonable time for a response from the superintendent or the director, the board may notify the
19 parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the
20 court for the resident involved, and the district court that has jurisdiction over the facility.

21 (8) The board shall report annually to the governor concerning the status of the residential facilities and
22 habilitation programs that it has inspected."

23

24 **Section 34.** Section 53-20-302, MCA, is amended to read:

25 **"53-20-302. Definition of community home -- limitation on number of residents.** A community home
26 for persons with developmental disabilities is a family-oriented residence or home designed to provide facilities
27 for two to eight persons with developmental disabilities, established as an alternative to existing state institutions.
28 The number of persons with developmental disabilities may not exceed eight in a community home, except that
29 the department of ~~public health and human services~~ justice may grant written approval for more than eight but
30 not more than twelve persons."

1

2 **Section 35.** Section 53-20-305, MCA, is amended to read:

3 **"53-20-305. Local control of community homes -- departmental licensing, administration,**
 4 **operation, health and safety standards.** (1) Community homes for persons with developmental disabilities may
 5 be under local control, and the nonprofit corporations or associations operating community homes are authorized
 6 to establish homes and programs they believe in the best interest of their homes.

7 (2) (a) A community home for persons with developmental disabilities must be licensed annually by the
 8 department of ~~public health and human services~~ justice.

9 (b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in
 10 the certification process.

11 (3) The department of ~~public health and human services~~ justice for the purpose of licensing shall adopt
 12 standards and rules concerning the administration, operation, health, and safety of community homes for persons
 13 with developmental disabilities."
 14

15 **Section 36.** Section 53-21-1001, MCA, is amended to read:

16 **"53-21-1001. Definitions.** As used in this part, the following definitions apply:

17 (1) "Community mental health center" means a licensed mental health center that provides
 18 comprehensive public mental health services in a multicounty region under contract with the department,
 19 counties, or one or more service area authorities.

20 (2) "Licensed mental health center" means an entity licensed by the department of ~~public health and~~
 21 ~~human services~~ justice to provide mental health services and has the same meaning as mental health center as
 22 defined in 50-5-101.

23 (3) "Service area" means a region of the state as defined by the department of public health and human
 24 services by rule within which mental health services are administered.

25 (4) "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to
 26 collaborate with the department of public health and human services for the planning and oversight of mental
 27 health services within a service area."
 28

29 **Section 37.** Section 53-24-201, MCA, is amended to read:

30 **"53-24-201. Department to administer chapter.** ~~The~~ Except as provided in 53-24-208, the department

1 shall administer the provisions of this chapter."
 2

3 **Section 38.** Section 53-24-204, MCA, is amended to read:

4 **"53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

5 (a) accept gifts, grants, and donations of money and property from public and private sources;

6 (b) enter into contracts;

7 (c) acquire and dispose of property.

8 (2) The department shall:

9 ~~(a) approve treatment facilities as provided for in 53-24-208;~~

10 ~~(b)~~(a) prepare a comprehensive long-term state chemical dependency plan every 4 years and update
 11 this plan each biennium;

12 ~~(c)~~(b) provide for and conduct statewide service system evaluations;

13 ~~(d)~~(c) distribute state and federal funds to the counties for approved treatment programs in accordance
 14 with the provisions of 53-24-108 and 53-24-206;

15 ~~(e)~~(d) plan in conjunction with approved programs and provide for training of program personnel
 16 delivering services to persons with a chemical dependency;

17 ~~(f)~~(e) establish criteria to be used for the development of new programs;

18 ~~(g)~~(f) encourage planning for the greatest use of funds by discouraging duplication of services,
 19 encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty
 20 districts or contract with urban programs for services;

21 ~~(h)~~(g) cooperate with the board of pardons and parole in establishing and conducting programs to
 22 provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal
 23 institutions;

24 ~~(i)~~(h) establish standards for chemical dependency educational courses provided by state-approved
 25 treatment programs and approve or disapprove the courses; and

26 ~~(j)~~(i) assist all interested public agencies and private organizations in developing education and
 27 prevention programs for chemical dependency."
 28

29 **Section 39.** Section 53-24-207, MCA, is amended to read:

30 **"53-24-207. Comprehensive program for treatment.** (1) The department shall establish a

1 comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons,
2 and family members.

3 (2) The program must include:

4 (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general
5 hospital;

6 (b) inpatient treatment;

7 (c) intermediate treatment;

8 (d) outpatient treatment; and

9 (e) followup services.

10 (3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated
11 persons admitted under 53-24-301 through 53-24-303.

12 (4) All appropriate public and private resources must be coordinated with and used in the program if
13 possible.

14 ~~(5) The department shall prepare, publish, and distribute annually a list of all approved public and private
15 treatment facilities."~~

16

17 **Section 40.** Section 53-24-208, MCA, is amended to read:

18 **"53-24-208. Facility standards.** (1) The department of justice shall establish standards for approved
19 treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility
20 and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may
21 concern the health standards to be met and standards for the approval of treatment programs for patients.

22 (2) Facilities applying for approval shall demonstrate that a local need currently exists for proposed
23 services and that the proposed services do not duplicate existing local services.

24 (3) The department of justice shall periodically inspect approved public and private treatment facilities
25 at reasonable times and in a reasonable manner.

26 (4) The department of justice shall maintain a list of approved public and private treatment facilities.

27 (5) Each approved public or private treatment facility shall, on request, file with the department of justice
28 data, statistics, schedules, and information that the department reasonably requires. An approved public or
29 private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as
30 requested or files fraudulent returns of the requested material must be removed from the list of approved

1 treatment facilities.

2 (6) The department of justice, after holding a hearing in accordance with the Montana Administrative
3 Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet
4 its standards.

5 (7) A district court may restrain any violation of this section, review any denial, restriction, or revocation
6 of approval, and grant other relief required to enforce its provisions.

7 (8) Upon petition of the department of justice and after a hearing held upon reasonable notice to the
8 facility, a district court may issue a warrant to the department of justice authorizing it to enter and inspect at
9 reasonable times and examine the books and accounts of any approved public or private treatment facility that
10 refuses to consent to inspection or examination by the department of justice or that the department of justice has
11 reasonable cause to believe is operating in violation of this chapter.

12 (9) If a rehabilitation facility otherwise meets the requirements of subsection (2), the department of justice
13 may consider as eligible for approval during the accreditation period any rehabilitation facility that furnishes written
14 evidence, including the recommendation for future compliance statements, of accreditation of its programs by
15 the commission on accreditation of rehabilitation facilities. The department of justice may, but is not required to,
16 inspect a facility considered eligible for approval under this section to ensure compliance with state approval
17 standards."

18

19 **Section 41.** Section 76-2-411, MCA, is amended to read:

20 **"76-2-411. Definition of community residential facility.** "Community residential facility" means:

21 (1) a community group home for developmentally, mentally, or severely disabled persons that does not
22 provide skilled or intermediate nursing care;

23 (2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program,
24 or youth group home as defined in 52-2-602;

25 (3) a halfway house operated in accordance with regulations of the department of ~~public health and~~
26 ~~human services~~ justice for the rehabilitation of alcoholics or drug dependent persons;

27 (4) a licensed adult foster family care home; or

28 (5) an assisted living facility licensed under 50-5-227."

29

30 **Section 42.** Section 76-2-412, MCA, is amended to read:

1 **"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth**
 2 **group homes, community residential facilities, and day-care homes to zoning.** (1) A foster home, kinship
 3 foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through
 4 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of
 5 property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

6 (2) A family day-care home or a group day-care home registered by the department of public health and
 7 human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of
 8 zoning.

9 (3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including
 10 but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department
 11 of public health and human services or any other agency of the state or a political subdivision of the state that
 12 is not applicable to residential occupancies in general may not be applied to a community residential facility
 13 serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

14 (4) This section may not be construed to prohibit a city or county from requiring a conditional use permit
 15 in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department
 16 of public health and human services or the department of justice. A city or county may not require a conditional
 17 use permit in order to maintain a day-care home registered by the department of public health and human
 18 services."

19
 20 NEW SECTION. Section 43. Transition -- report to legislature. The department of justice shall create
 21 a transition plan to implement the provisions of [this act] by July 1, 2016. The department of public health and
 22 human services shall participate in the planning process to the extent required. The department of justice shall
 23 report to the children, families, health, and human services interim committee provided for in 5-5-225 at times
 24 requested by the committee.

25
 26 NEW SECTION. Section 44. Appropriation for transition support. (1) There is appropriated \$75,000
 27 from the general fund to the department of justice for the biennium beginning July 1, 2015.

28 (2) The money must be used for two full-time equivalent personnel positions to serve as transition
 29 support to implement the provisions of [this act].

30 (3) The legislature intends that these positions be one-time only for the biennium beginning July 1, 2015.

