

1 SENATE BILL NO. 113

2 INTRODUCED BY ESP

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING HOSPITALS AND RELATED
6 FACILITIES; DEFINING "INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED";
7 PROVIDING FOR THE LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY
8 DISABLED; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT
9 RULES FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY
10 DISABLED; ELIMINATING A HEALTH MAINTENANCE ORGANIZATION FROM THE DEFINITION OF
11 "HEALTHCARE FACILITY"; AMENDING SECTIONS 50-5-101, 50-6-165, 53-6-171, AND 53-6-702, MCA; AND
12 PROVIDING AN EFFECTIVE DATE."

13

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

15

16 **Section 1.** Section 50-5-101, MCA, is amended to read:

17 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates
18 otherwise, the following definitions apply:

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

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

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

27 (b) As used in this subsection (3), the following definitions apply:

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

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

1 to meet those basic needs.

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

4 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
5 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
6 administration.

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

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

11 (5) "Capital expenditure" means:

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

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

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

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

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

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

29 (10) "Commission on accreditation of rehabilitation facilities" means the organization nationally
30 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status

1 to a rehabilitation facility that it finds meets its standards and requirements.

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

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

7 (13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
8 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
9 50-5-233.

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

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

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

14 (17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision
15 of the state, or an agency of a political subdivision.

16 (18) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
17 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
18 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
19 individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health~~
20 ~~care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical
21 dependency facilities, critical access hospitals, end-stage renal dialysis facilities, ~~health maintenance~~
22 ~~organizations~~, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term
23 care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental
24 health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation
25 facilities, residential care facilities, and residential treatment facilities.

26 (b) The term does not include offices of private physicians, dentists, or other physical or mental health
27 care workers regulated under Title 37, including chemical dependency counselors.

28 (19) ~~"Health maintenance organization" means a public or private organization that provides or arranges~~
29 ~~for health care services to enrollees on a prepaid or other financial basis, either directly through provider~~
30 ~~employees or through contractual or other arrangements with a provider or group of providers.~~

1 ~~(20)~~(19) "Home health agency" means a public agency or private organization or subdivision of the
2 agency or organization that is engaged in providing home health services to individuals in the places where they
3 live. Home health services must include the services of a licensed registered nurse and at least one other
4 therapeutic service and may include additional support services.

5 ~~(21)~~(20) "Home infusion therapy agency" means a health care facility that provides home infusion
6 therapy services.

7 ~~(22)~~(21) "Home infusion therapy services" means the preparation, administration, or furnishing of
8 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.
9 The services include an educational component for the patient, the patient's caregiver, or the patient's family
10 member.

11 ~~(23)~~(22) "Hospice" means a coordinated program of home and inpatient health care that provides or
12 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
13 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages
14 of illness and dying and that includes formal bereavement programs as an essential component. The term
15 includes:

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

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

20 ~~(24)~~(23) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
21 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
22 Services provided may or may not include obstetrical care, emergency care, or any other service allowed by
23 state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes,
24 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term
25 includes hospitals specializing in providing health services for psychiatric, ~~mentally retarded~~ developmentally
26 disabled, and tubercular patients;

27 (b) ~~but does~~ The term does not include critical access hospitals.

28 ~~(25)~~(24) "Infirmar-y" means a facility located in a university, college, government institution, or industry
29 for the treatment of the sick or injured, with the following subdefinitions:

30 (a) an "infirmar-y--A" provides outpatient and inpatient care;

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

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

4 (b) The term does not include community homes for persons with developmental disabilities that are
5 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
6 52-4-203.

7 (26) "Intermediate developmental disability care" means the provision of intermediate nursing care
8 services, health-related services, and social services for persons with a developmental disabilities disability, as
9 defined in 53-20-102, or for individuals persons with related problems.

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

12 (28) "Joint commission on accreditation of healthcare organizations" means the organization nationally
13 recognized by that name that surveys health care facilities upon their requests and grants accreditation status
14 to a health care facility that it finds meets its standards and requirements.

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

18 (b) The term does not include community homes for persons with developmental disabilities licensed
19 under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care
20 facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations
21 providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult
22 correctional facilities operating under the authority of the department of corrections.

23 (30) "Medical assistance facility" means a facility that meets both of the following:

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

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

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

6 (32) "Nonprofit health care facility" means a health care facility owned or operated by one or more
7 nonprofit corporations or associations.

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

9 (34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed
10 physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for
11 surgical services.

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

15 (36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care
16 facility.

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

19 (38) "Personal care" means the provision of services and care for residents who need some assistance
20 in performing the activities of daily living.

21 (39) "Personal-care facility" means a facility in which personal care is provided for residents in either a
22 category A facility or a category B facility as provided in 50-5-227.

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

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

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

30 (43) "Residential care facility" means an adult day-care center, an adult foster care home, a

1 personal-care facility, or a retirement home.

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

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

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

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

13 (48) "State health care facilities plan" means the plan prepared by the department to project the need
14 for health care facilities within Montana and approved by the governor and a statewide health coordinating
15 council appointed by the director of the department.

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

18

19 **Section 2.** Section 53-6-165, MCA, is amended to read:

20 **"53-6-165. Definitions.** As used in this part, unless expressly provided otherwise, the following
21 definitions apply:

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

23 (2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for
24 medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has
25 received benefits, whether or not that person has been determined to be eligible.

26 (3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited
27 to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance
28 paid on behalf of a recipient who:

29 (a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the
30 ~~mentally retarded~~ developmentally disabled, or institution for mental disease and, with respect to that

1 institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to
2 be discharged and return home; or

3 (b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when
4 the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

5 (4) "Recovery" means legal action brought for the payment or repayment of recoverable medical
6 assistance or amounts of money paid for other purposes."

7

8 **Section 3.** Section 53-6-171, MCA, is amended to read:

9 **"53-6-171. Department lien upon real property of certain medicaid recipients -- conditions. (1)**

10 Following notice and opportunity for hearing as provided in 53-6-172, the department shall impose a lien upon
11 the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure
12 the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after
13 the imposition of the lien if:

14 (a) the recipient has been admitted to a nursing facility, an intermediate care facility for the ~~mentally~~
15 ~~retarded~~ developmentally disabled, or an institution for mental disease;

16 (b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully
17 resided in by:

18 (i) the recipient's spouse;

19 (ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or

20 (iii) the recipient's sibling who was residing in the recipient's home for a period of at least 18 months
21 immediately prior to the recipient's institutionalization; and

22 (c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently
23 institutionalized.

24 (2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department
25 determines that the recipient cannot reasonably be expected to be discharged from the facility and to return
26 home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from
27 the facility and return home if the recipient or a representative of the recipient declares that there is no intent to
28 return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The
29 recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to
30 the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or

1 a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and
 2 a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must
 3 be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's
 4 representative that the recipient intends to be discharged from the facility and to return home is not alone
 5 sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

6 (3) For purposes of this section, real property of a recipient includes any interest in real property that
 7 may be subject to a judgment lien."

8

9 **Section 4.** Section 53-6-702, MCA, is amended to read:

10 **"53-6-702. Definitions.** As used in this part, the following definitions apply:

11 (1) "Department" means the department of public health and human services.

12 (2) "Health maintenance organization" means a ~~health maintenance organization as defined in 50-5-101~~
 13 ~~public or private organization that provides or arranges for health care services to enrollees on a prepaid or other~~
 14 ~~financial basis, either directly through provider employees or through contractual or other arrangements with a~~
 15 ~~provider or group of providers.~~ HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN 33-31-102.

16 (3) (a) "Managed care community network" or "network" means an entity, other than a health
 17 maintenance organization, that provides or arranges for comprehensive physical or mental health care services
 18 under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a
 19 specified time period with a risk of financial loss or a financial incentive to the entity, and that:

20 (i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds;

21 or

22 (ii) operates statewide or covers 20% or more of the medicaid population.

23 (b) The term does not include a provider of health care services under a contract with the department
 24 on a fee-for-service basis.

25 (4) "Managed health care entity" or "entity" means a health maintenance organization or a managed
 26 care community network.

27 (5) "Program" means an element of the integrated health care system created by this part."

28

29 **NEW SECTION. Section 5. Licensure of intermediate care facility for developmentally disabled**

30 **-- rulemaking.** (1) The department shall adopt procedures for licensing intermediate care facilities for the

1 developmentally disabled. A person may not operate an intermediate care facility for the developmentally
2 disabled without a license. The application for a license must include:

- 3 (a) the name and address of the applicant;
- 4 (b) the location of the intermediate care facility for the developmentally disabled;
- 5 (c) the name of the person or persons who will manage or supervise the intermediate care facility for
6 the developmentally disabled;
- 7 (d) the number of persons with developmental disabilities who will receive care at the intermediate care
8 facility for the developmentally disabled; and
- 9 (e) other information required by the department by rule.

10 (2) The department may adopt rules establishing standards for licensing intermediate care facilities for
11 the developmentally disabled. The standards must address the protection of residents' rights, INDIVIDUAL
12 RESIDENT TREATMENT AND HABILITATION NEEDS, staffing requirements, including qualifications, resident behavior
13 and facility practices, health care services, physical environment, dietetic services, and recordkeeping. ~~In~~
14 ~~adopting rules relating to treatment for residents, the department shall consider medicaid standards, with the~~
15 ~~exception of active treatment standards.~~

16

17 NEW SECTION. Section 6. Codification instruction. [Section 5] is intended to be codified as an
18 integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 5].

19

20 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2003.

21 - END -