

SENATE BILL NO. 113

INTRODUCED BY J. ESP

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Capital expenditure" means:

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

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

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

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

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

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

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

(11) "Comparative review" means a joint review of two or more certificate of need applications that are

determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

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

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

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

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

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

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

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

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

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

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

therapeutic service and may include additional support services.

~~(24)~~(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

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

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

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

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

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

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

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

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

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

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

(b) The term does not include community homes for persons with developmental disabilities that are

licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

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

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

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

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

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

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

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

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

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

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

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

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the ~~mentally retarded~~ developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

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

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

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

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

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

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

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

(i) the recipient's spouse;

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

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

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

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

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

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

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

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

(2) "Health maintenance organization" means a ~~health maintenance organization as defined in 50-5-101~~ public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

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

- (i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or
- (ii) operates statewide or covers 20% or more of the medicaid population.

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

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

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

NEW SECTION. Section 5. Licensure of intermediate care facility for developmentally disabled -- rulemaking. (1) The department shall adopt procedures for licensing intermediate care facilities for the developmentally disabled. A person may not operate an intermediate care facility for the developmentally disabled without a license. The application for a license must include:

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

(2) The department may adopt rules establishing standards for licensing intermediate care facilities for

the developmentally disabled. The standards must address the protection of residents' rights, staffing requirements, including qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping. In adopting rules relating to treatment for residents, the department shall consider medicaid standards, with the exception of active treatment standards.

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

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

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