

SENATE BILL NO. 347
INTRODUCED BY B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC MENTAL HEALTH SERVICES; PROVIDING FOR DEVELOPMENT OF SERVICE AREA AUTHORITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING FOR DEPARTMENT DUTIES, INCLUDING PREPARATION AND MAINTENANCE OF A COMPREHENSIVE MENTAL HEALTH PLAN, MENTAL HEALTH SERVICE AREAS, AND PROVIDER CERTIFICATION STANDARDS; PROVIDING FOR DEVELOPMENT OF REGIONAL SERVICE AREA AUTHORITIES AND SERVICE PLANS WITH DEPARTMENT SUPPORT; REVISING RESPONSES TO THE MENTAL DISABILITIES BOARD OF VISITORS BY MENTAL HEALTH FACILITIES; REPEALING PROVISIONS REGARDING REGIONAL MENTAL HEALTH CORPORATIONS AND COMMUNITY MENTAL HEALTH CENTERS; AMENDING SECTIONS 19-3-108, 53-1-602, 53-6-101, 53-21-104, AND 53-21-138, MCA; AND REPEALING SECTIONS 53-21-201, 53-21-202, 53-21-203, 53-21-204, 53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, AND 53-21-214, MCA."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], the following definitions apply:

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

(2) "Service area authority" means an entity, as provided for in [section 3], that has incorporated to contract with the department for the provision of mental health services within a service area as defined by the department by rule.

NEW SECTION. **Section 2. Duties of department.** The department:

(1) shall take cognizance of matters affecting the mental health of the citizens of the state;

(2) shall initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The department shall initiate and operate services in cooperation with local agencies and service area authorities.

(3) shall collect and disseminate information relating to mental health;

(4) shall prepare and maintain a comprehensive plan to develop public mental health services in the state and to establish service areas;

(5) must receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) shall establish qualified provider certification standards by rule, which must include requirements for national accreditation for mental health programs that receive funds from the department;

(7) shall perform an annual review and evaluation of mental health needs and services within the state by region and evaluate the performance of programs that receive funds from the department for compliance with federal and state standards;

(8) shall coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(9) shall coordinate the establishment of service area authorities, as provided in [section 3], to assist the department in the coordination and delivery of mental health services.

NEW SECTION. Section 3. Service area authorities -- leadership committees -- boards -- plans.

(1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for mental illness, advocates, family members of persons with mental illness, and other interested community members.

(2) The leadership committee within each service area must include a significant portion of consumers of mental health services and family members of consumers of mental health services. The department shall provide staff and support for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's functions and method of appointment. The bylaws must be submitted to the department for approval.

(4) The service area authority board must be established under Title 35, chapter 2. Upon incorporation, the board may enter into contracts with the department to carry out the comprehensive plan for mental health for

that service area. Nonprofit corporations incorporated for the purposes of [sections 1 through 5] may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

(a) shall define the operation and management of the service area mental health system, including infrastructure, information system requirements, and procurement processes;

(b) shall develop parameters with the department for quality and outcome management, including maintenance of a qualified provider network;

(c) shall submit a biennial review and evaluation of mental health service needs and services within the service area;

(d) shall keep all records of the board and make reports required by the department;

(e) shall prepare and submit a plan and budget proposal to provide and support mental health services within the service area to the department and to each county in the service area;

(f) must receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of [sections 1 through 5].

(g) shall supervise administrative support staff and the provision of mental health services within the service area; and

(h) shall reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board.

(6) A service area authority board shall develop a plan to provide the following services:

(a) provider contracting and credentialing;

(b) quality management;

(c) service planning;

(d) utilization management and review;

(e) preadmission screening and discharge planning; and

(f) consumer advocate and family education and rights protection.

(7) The department shall review the plan and assess the readiness of the service area authority to assume each duty provided in subsection (5). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that service.

(8) A service area authority may not directly provide mental health services.

NEW SECTION. Section 4. Mental health center contracts. (1) The department shall provide for public mental health services for the purposes of the prevention, diagnosis, and treatment of mental illness to the extent funded by the legislature.

(2) The department may administer the provision of services for prevention, diagnosis, and treatment of mental illness directly or indirectly:

(a) through contract with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers; or

(b) through contract with service area authorities who may contract with or develop cooperative arrangements with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers for the provision of services.

(3) The department is directed to encourage and create incentives for the use of funding generated by local governments to provide mental health services to participate in federal cost-sharing programs.

NEW SECTION. Section 5. Continuation of services. [Sections 1 through 5] may not be construed to prevent the continuation of services by or the facilities of existing community mental health centers.

Section 6. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer; ~~except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.~~

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 7. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital; and

(ii) the Montana mental health nursing care center; ~~and~~

~~(iii)~~(b) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to ~~Title 53, chapter 21, part 2~~ [sections 1 through 5];

~~(b)~~(c) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

~~(e)~~(d) institutional and residential components of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which components consist of:

- (i) the Montana developmental center; and
- (ii) the Eastmont human services center; and

~~(d)~~(e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

- (i) the Montana veterans' home; and
- (ii) the eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 8. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program -- authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under ~~Title 53, chapter 21, part 2~~ sections 1 through 5;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 9. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review that is responsible to ensure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane, is consistent with established clinical and other professional standards, and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to ensure that each research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An activity considered to be an experimental research project and that involves a person or persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) (a) The board shall inspect every mental health facility that provides treatment or evaluation to any person pursuant to this part.

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

(c) The board's authority to inspect mental health facilities may not be waived or precluded by other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

(d) The board shall produce a written report of each inspection of a mental health facility that must include specific recommendations for improvements that the board concludes are necessary in order for the inspected facility to meet the requirements in this part.

(e) The board shall provide a draft of each written report within 30 calendar days of the completion of each mental health facility inspection to the professional person in charge of the inspected facility for review prior to publication.

(f) The professional person in charge of the inspected facility shall provide a written response to the board's written report within 30 calendar days of receipt of the report. The response must include one of the following for each recommendation:

(i) a specific plan for implementation of the recommended action; or

(ii) a specific rationale that explains why the recommendation cannot be implemented.

(g) The board shall include the inspected facility's written response in the board's final published written

report.

(h) The board shall include in subsequent inspections an assessment of each facility's implementation of the recommendations.

(i) The board shall report in writing to the director of the department and the governor when it determines that a mental health facility has not either implemented written recommendations or provided a specific rationale that explains why any recommendations cannot be implemented.

(4) (a) The board, by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and is being implemented for each patient admitted or committed to the mental health facility being inspected under this part.

(b) The board, during a scheduled inspection of a mental health facility, shall review all aspects of the treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve behavior control, including but not limited to the use of any type of mechanical restraints, locked and unlocked seclusion or isolation, time out, or any other procedure involving physical control.

(c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.

(d) The board may exercise the prerogative to inquire about and ensure the existence and implementation of treatment plans and discharge plans for any person admitted to a mental health facility and to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any person admitted to a mental health facility independent of its facility inspection schedule.

(5) The board may assist any person who is receiving or who has received treatment at a mental health facility in resolving any grievance the person may have concerning the person's admission or course of treatment in the facility.

(6) The board shall employ and is responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the state hospital. The board shall ensure that there are sufficient legal staff and facilities to ensure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) ~~(a)~~ If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any person, it shall report its findings in writing to the professional person in charge of the facility and the director of the department.

~~(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days that includes a specific plan to implement corrective action.~~

~~(c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working days of the written notice provided for in subsection (7)(a), the board shall notify the next of kin or guardian of any person involved, the friend of respondent appointed by the court for any person involved, the district court that has jurisdiction over the facility, and the governor.~~

(8) The board shall publish standards for its inspections of mental health facilities.

(9) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs that it has inspected since the last annual report; and

(b) occurrences of the administration of medications against the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review procedure required by 53-21-127(6) in protecting persons from unnecessary or excessive medication."

Section 10. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center.

(1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community service area authority, as provided in [sections 1 through 5], for referral to a mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a

nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

NEW SECTION. **Section 11. Repealer.** Sections 53-21-201, 53-21-202, 53-21-203, 53-21-204, 53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, and 53-21-214, MCA, are repealed.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 5].

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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