

SENATE BILL NO. 271

INTRODUCED BY F. THOMAS, M. BLASDEL, M. CAFERRO, R. EHLI, W. GALT, B. KEENAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE CLOSURE OF THE  
5 MONTANA DEVELOPMENTAL CENTER; EXTENDING THE DATE BY WHICH THE MONTANA  
6 DEVELOPMENTAL CENTER MUST BE CLOSED; EXTENDING THE DATE BY WHICH COURTS MAY NO  
7 LONGER COMMIT INDIVIDUALS TO THE MONTANA DEVELOPMENTAL CENTER; ELIMINATING THE  
8 TRANSITION PLANNING COMMITTEE; PROVIDING A CAP ON THE CENSUS AT THE MONTANA  
9 DEVELOPMENTAL CENTER; DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
10 TO SEEK AN AMENDMENT TO THE MEDICAID HOME AND COMMUNITY-BASED SERVICES 0208 WAIVER  
11 FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AMENDING SECTIONS 53-20-125 AND  
12 53-20-129, MCA; AMENDING SECTION 1, CHAPTER 444, LAWS OF 2015, AND SECTION 3, CHAPTER 444,  
13 LAWS OF 2015; REPEALING SECTION 2, CHAPTER 444, LAWS OF 2015; AND PROVIDING AN IMMEDIATE  
14 EFFECTIVE DATE."  
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16 WHEREAS, the process to close the Montana Developmental Center has been very successful but is  
17 not yet finished; and

18 WHEREAS, a key issue that has slowed the appropriate placement of Montana Developmental Center  
19 residents into the community is the difficulty in accessing all of the funding allotted to the residents for their  
20 placements; and

21 WHEREAS, the reason that all of the funding cannot be accessed is because of problems with the  
22 Medicaid home and community-based services 0208 waiver for individuals with developmental disabilities.  
23

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
25

26 **Section 1.** Section 53-20-125, MCA, is amended to read:

27 **"53-20-125. Outcome of screening -- recommendation for commitment or imposition of**  
28 **community treatment plan -- hearing.** (1) A court may commit a person to a residential facility or impose a  
29 community treatment plan only if the person:

30 (a) is 18 years of age or older; and



1 (b) is determined to be seriously developmentally disabled and in need of commitment to a residential  
2 facility or imposition of a community treatment plan by the residential facility screening team, as provided in  
3 53-20-133, and by a court, as provided in 53-20-129 or in this section.

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

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

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

12 (a) the respondent;

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

14 (c) the responsible person;

15 (d) the respondent's advocate, if any;

16 (e) the county attorney;

17 (f) the residential facility to which the residential facility screening team has recommended commitment;

18 (g) the attorney for the respondent, if any; and

19 (h) the attorney for the parents or guardian, if any.

20 (5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's  
21 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the  
22 residential facility screening team. The request for a hearing must be made in writing within 15 days of service  
23 of the report.

24 (6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

25 (7) The hearing must be held before the court without jury. The rules of civil procedure apply.

26 (8) Upon receiving the report of the residential facility screening team and after a hearing, if one is  
27 requested, the court shall enter findings of fact and take one of the following actions:

28 (a) If both the residential facility screening team and the court find that the respondent is seriously  
29 developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent  
30 committed to a residential facility for an extended course of treatment and habilitation, subject to the provisions

1 of subsection (12).

2 (b) If both the residential facility screening team and the court find that the respondent is seriously  
3 developmentally disabled but either the residential facility screening team or the court finds that a less restrictive  
4 community treatment plan has been proposed, the court may impose a community treatment plan that meets the  
5 conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties  
6 or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4),  
7 it may order the respondent committed to a residential facility. The court may not impose a community treatment  
8 plan unless the residential facility screening team certifies that all services in the proposed plan meet the  
9 conditions of 53-20-133(4)(c) and (4)(d).

10 (c) If either the residential facility screening team or the court finds that the respondent has a  
11 developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and  
12 refer the respondent to the department of public health and human services to be considered for placement in  
13 voluntary community-based services according to 53-20-209.

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

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

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

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

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

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

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

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

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

4 (b) After December 31, ~~2016~~ 2018, a court may not commit a respondent to the Montana developmental  
5 center."  
6

7 **Section 2.** Section 53-20-129, MCA, is amended to read:

8 **"53-20-129. Emergency admission and commitment.** (1) Subject to the provisions of subsection (3),  
9 a person believed to be seriously developmentally disabled may be admitted to a residential facility or a temporary  
10 court-ordered community treatment plan may be imposed on an emergency basis without notice to the person  
11 or approval by the residential facility screening team when necessary to protect the person or others from death  
12 or serious bodily injury, as defined in 45-2-101.

13 (2) An emergency admission to a residential facility may be initiated only by a developmental disabilities  
14 professional.

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

18 (b) After December 31, ~~2016~~ 2018, an emergency admission may not be made to the Montana  
19 developmental center.

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

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

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

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

1 treatment plan.

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

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

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

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14 **Section 3.** Section 1, Chapter 444, Laws of 2015, is amended to read:

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

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

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

24 (3) cap the census at the Montana developmental center at 26 residents and continue to transition most  
25 residents out of the Montana developmental center and into community-based services by December 31, 2016.

26 As part of this transition, the legislature intends for the department of public health and human services to:

27 (a) actively pursue the timely discharge of Montana developmental center residents into  
28 community-based services; and

29 (b) work with community providers to develop necessary services.

30 (4) by no later than September 30, 2017, submit to the centers for medicare and medicaid services a

1 request for an amendment to the medicaid home and community-based services 0208 waiver for individuals with  
2 developmental disabilities that:

3 (a) allows individuals and providers to use the entirety of each individual's cost plan to provide services  
4 that the individual needs to be successful in the community, NOT TO EXCEED THE AMOUNT OF MEDICAID WAIVER  
5 APPROPRIATIONS IN HOUSE BILL NO. 2;

6 (b) provides the flexibility necessary to enable the provision of professional services to an individual; AND

7 (c) provides a sufficient number of emergency slots throughout Montana to accommodate individuals  
8 who may go into crisis; and.

9 (d) accommodates providers' needs to recruit a sufficient number of competent employees to serve  
10 individuals in the community."

11

12 **Section 4.** Section 3, Chapter 444, Laws of 2015, is amended to read:

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

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

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

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

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22 NEW SECTION. **Section 5. Repealer.** Section 2, Chapter 444, Laws of 2015, is repealed.

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24 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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