

SENATE BILL NO. 272

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A NEW LICENSE FOR ASSISTED LIVING FACILITIES FOR THOSE WITH DEMENTIA OR OTHER MENTAL DISORDERS WHO MIGHT BE A HARM TO THEMSELVES OR OTHERS; PROVIDING AN INVOLUNTARY COMMITMENT DIVERSION OPTION; AMENDING LAWS RELATED TO INVOLUNTARY COMMITMENT TO ADDRESS THE ADDED DIVERSION ALTERNATIVE; AND AMENDING SECTIONS 50-5-226, 50-5-227, 53-21-122, 53-21-123, 53-21-127, 53-21-181, AND 53-21-198, MCA."

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

NEW SECTION. Section 1. Option for diversion from involuntary commitment to Montana state hospital. (1) Subject to subsection (3), a person with a mental disorder who is detained under 53-21-120(4) may, upon meeting the requirements in 50-5-226(5), request diversion to a category D assisted living facility.

(2) If a court, after obtaining the results of an examination as provided in 53-21-123, finds that a short-term inpatient treatment is inappropriate for a person who otherwise is eligible for involuntary commitment to the Montana state hospital, the court may initiate the process necessary to determine eligibility for residency in a category D assisted living facility.

(3) For a person to be eligible for diversion from the Montana state hospital to a category D assisted living facility, a court determination and an examination under 53-21-123 must indicate that the person:

- (a) is not suffering acute psychosis;
- (b) is experiencing behavioral patterns that may make the person a danger to self or others;
- (c) is dependent on assistance for two or more activities of daily living; and
- (d) is more likely to benefit from being in a category D assisted living facility than in the Montana mental health nursing care center or the Montana state hospital.

Section 2. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in assisted living facilities. (1) An assisted living facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which

1 the facility is licensed under 50-5-227.

2 (2) An assisted living facility licensed as a category A facility under 50-5-227 may not admit or retain a
3 category A resident unless each of the following conditions is met:

4 (a) The resident may not require physical or chemical restraint or confinement in locked quarters, but
5 may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

6 (b) The resident may not have a stage 3 or stage 4 pressure ulcer.

7 (c) The resident may not have a gastrostomy or jejunostomy tube.

8 (d) The resident may not require skilled nursing care or other skilled services on a continued basis
9 except for the administration of medications consistent with applicable laws and regulations.

10 (e) The resident may not be a danger to self or others.

11 (f) The resident must be able to accomplish activities of daily living with supervision and assistance
12 based on the following:

13 (i) the resident may not be consistently and totally dependent in four or more activities of daily living as
14 a result of a cognitive or physical impairment; and

15 (ii) the resident may not have a severe cognitive impairment that renders the resident incapable of
16 expressing needs or making basic care decisions.

17 (3) An assisted living facility licensed as a category B facility under 50-5-227 may not admit or retain a
18 category B resident unless each of the following conditions is met:

19 (a) The resident may require skilled nursing care or other services for more than 30 days for an incident,
20 for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as
21 provided for in the facility agreement.

22 (b) The resident may be consistently and totally dependent in more than four activities of daily living.

23 (c) The resident may not require physical or chemical restraint or confinement in locked quarters, but
24 may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

25 (d) The resident may not be a danger to self or others.

26 (e) The resident must have a practitioner's written order for admission as a category B resident and
27 written orders for care.

28 (f) The resident must have a signed health care assessment, renewed on a quarterly basis by a licensed
29 health care professional who:

30 (i) actually visited the facility within the calendar quarter covered by the assessment;

1 (ii) has certified that the particular needs of the resident can be adequately met in the facility; and
2 (iii) has certified that there has been no significant change in health care status that would require another
3 level of care.

4 (4) An assisted living facility licensed as a category C facility under 50-5-227 may not admit or retain a
5 category C resident unless each of the following conditions is met:

6 (a) The resident has a severe cognitive impairment that renders the resident incapable of expressing
7 needs or of making basic care decisions.

8 (b) The resident may be at risk for leaving the facility without regard for personal safety.

9 (c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.

10 (d) The resident may not require physical or chemical restraint or confinement in locked quarters, but
11 may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

12 (5) (a) An assisted living facility licensed as a category D facility under 50-5-227 may not admit or retain
13 a category D resident unless each of the conditions in subsections (5)(b) and (5)(c) is met or a court has ordered
14 diversion as provided in subsection (5)(d).

15 (b) The resident must be dependent on assistance for two or more activities of daily living and may
16 require skilled nursing care or other services that may be provided or arranged for by either the facility or the
17 resident or provided for in the facility agreement.

18 (c) The resident must be assessed by a practitioner or adjudged by a court as having been or potentially
19 being a danger to self or others. The practitioner shall submit both a health care assessment, renewed on a
20 monthly basis, and a written order for care that:

21 (i) provides information on behavioral patterns under which the category D resident may pose a threat
22 to others and may need to be kept separate from other category D residents or residents in other categories of
23 assisted care;

24 (ii) lists the conditions under which the category D resident can be reasonably, temporarily restrained,
25 using protective restraints ~~as defined in 21 CFR 880.6760~~, medications, or confinement to avoid harm to the
26 resident or others;

27 (iii) includes a reason why a category D assisted living facility is more appropriate than other options for
28 care and provides an assessment of the resident's needs and plan for care; and

29 (iv) indicates the timeframe over which the resident's health care status has remained the same or
30 changed.

1 (d) A court may order a diversion from an involuntary commitment to Montana state hospital or from the
 2 Montana mental health care center as provided in 53-21-127 or [section 1]. A diversion ordered pursuant to
 3 [section 1] may be an involuntary commitment but must be treated as provided in 53-21-181.

4 ~~(5)(6)~~ For category B ~~and~~ C, and D residents, the assisted living facility shall specify services that it will
 5 provide in the facility admission criteria.

6 ~~(6)(7)~~ The department shall develop standardized forms and education and training materials to provide
 7 to the assisted living facilities and to the licensed health care professionals who are responsible for the signed
 8 statements provided for in subsection (3)(f). The use of the standardized forms is voluntary.

9 ~~(7)(8)~~ The department shall provide by rule:

10 (a) an application or placement procedure informing a prospective resident and, if applicable, the
 11 resident's practitioner of:

12 (i) physical and mental standards for residents of assisted living facilities;

13 (ii) requirements for placement in a facility with a higher standard of care if a resident's condition
 14 deteriorates; and

15 (iii) the services offered by the facility and services that a resident may receive from third-party providers
 16 while the resident lives at the facility;

17 (b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and
 18 prospective residents to prevent residence by individuals referred to in subsections (3) ~~and~~ (4), and (5). An
 19 individual subject to 46-14-301 is not eligible to be placed in a category D assisted living facility.†

20 (c) a method by which the results of any screening decision made pursuant to rules established under
 21 subsection ~~(7)(b)~~ (8)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective
 22 resident;

23 (d) standards for operating a category A assisted living facility, including standards for the physical,
 24 structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of
 25 a facility and the storage and administration of over-the-counter and prescription medications; ~~and~~

26 (e) standards for operating a category B assisted living facility, which must include the standards for a
 27 category A assisted living facility and additional standards for assessment of residents, care planning,
 28 qualifications and training of staff, prevention and care of pressure sores, and incontinence care; and

29 (f) standards for operating a category C and a category D assisted living facility, which must include the
 30 standards for a category B assisted living facility and additional standards for resident assessment, the provision

1 of specialty care to residents with cognitive impairments, and additional qualifications of and training for the
 2 administrator and direct-care staff. The standards for a category D assisted living facility must also include
 3 specific safety and restraint training."

4

5 **Section 3.** Section 50-5-227, MCA, is amended to read:

6 **"50-5-227. Licensing assisted living facilities.** (1) The department shall by rule adopt standards for
 7 licensing and operation of assisted living facilities to implement the provisions of 50-5-225 and 50-5-226.

8 (2) The following licensing categories must be used by the department in adopting rules under
 9 subsection (1):

10 (a) category A facility serving residents requiring the level of care as provided for in 50-5-226(2);

11 (b) category B facility providing skilled nursing care or other skilled services to five or fewer residents
 12 who meet the requirements stated in 50-5-226(3); ~~or~~

13 (c) category C facility providing services to residents with cognitive impairments requiring the level of
 14 care stated in 50-5-226(4); or

15 (d) category D facility providing services to residents with mental disorders who may be a temporary
 16 harm to themselves or others and who require the level of care stated in 50-5-226(5).

17 (3) (a) A single facility meeting the applicable requirements for a category A facility may additionally be
 18 licensed to provide category B or category C services with the approval of the department.

19 (b) If a single facility meeting the applicable requirements as provided in subsection (3)(a) further seeks
 20 to be licensed as a category D facility, the facility shall provide documentation that indicates the facility can keep
 21 all residents safe.

22 (4) The department may by rule establish license fees, inspection fees, and fees for patient screening.
 23 Fees must be reasonably related to service costs."

24

25 **Section 4.** Section 53-21-122, MCA, is amended to read:

26 **"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with
 27 the clerk of court who shall immediately notify the judge.

28 (2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be
 29 dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge
 30 may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the

1 respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent
2 must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the
3 substantive effect of the petition. The respondent must also be advised that the professional person appointed
4 to conduct the examination under 53-21-123 will include in the professional person's report a recommendation
5 about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment
6 provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as provided in [section 1].
7 The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge
8 shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the
9 same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless
10 the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

11 (b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of
12 respondent as set out in this part and the respondent personally or through counsel consents, the court shall
13 appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's
14 conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person
15 appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of
16 this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court
17 shall change the designation of the friend of respondent at the request of the respondent or if it determines that
18 a conflict of interest exists between the respondent and the friend of respondent.

19 (3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone
20 and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by
21 telephone as if the judge were personally present, including ordering the office of state public defender, provided
22 for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order
23 that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the
24 respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well
25 as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional
26 person appointed to conduct the examination under 53-21-123 will include in the professional person's report a
27 recommendation about whether the respondent should be diverted from involuntary commitment to short-term
28 inpatient treatment provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as
29 provided in [section 1]. The justice of the peace shall ascertain the desires of the respondent with respect to the
30 assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information

1 must be immediately communicated to the resident judge."

2

3 **Section 5.** Section 53-21-123, MCA, is amended to read:

4 **"53-21-123. Examination of respondent following initial hearing -- recommendation of**
5 **professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the
6 respondent must be examined by the professional person without unreasonable delay. The examination may not
7 exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings
8 in person or by phone and shall make a written report of the examination to the court, with copies to the
9 respondent's attorney and the county attorney.

10 (2) (a) The professional person shall include in the report a recommendation about whether the
11 respondent should be:

12 (i) diverted from involuntary commitment to short-term inpatient treatment provided for under 53-21-1205
13 and 53-21-1206; or

14 (ii) evaluated for eligibility as a resident in a category D assisted living facility as provided in [section 1].

15 (b) If the professional person recommends commitment, the professional person's written report must
16 contain a statement of the professional person's recommendations to the court for disposition under 53-21-127.

17 (3) The following action must be taken based on the professional person's findings:

18 (a) If the professional person recommends dismissal, the professional person shall additionally notify
19 counsel and the respondent must be released and the petition dismissed. However, the county attorney may,
20 upon good cause shown, request the court to order an additional, but no more than one, examination by a
21 different professional person for a period of no more than 4 hours.

22 (b) If the professional person recommends diversion from involuntary commitment to short-term inpatient
23 treatment or an option for living in a category D assisted living facility, the court shall suspend the commitment
24 hearing unless the county attorney or the respondent's attorney objects within 24 hours of receiving notice of the
25 professional person's recommendation.

26 (c) If the court finds that commitment proceedings should continue, the hearing must be held as
27 scheduled.

28 (4) The court may not order further evaluation pending the hearing unless sound medical reasons require
29 additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of
30 additional time needed."

1

2 **Section 6.** Section 53-21-127, MCA, is amended to read:

3 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering
4 from a mental disorder or does not require commitment within the meaning of this part, the respondent must be
5 discharged and the petition dismissed.

6 (2) If it is determined that the respondent is suffering from a mental disorder and requires commitment
7 within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must
8 be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday,
9 Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

10 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court
11 shall:

12 (a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral
13 health inpatient facility for a period of not more than 3 months;

14 (b) commit the respondent to a community facility, which may include a category D assisted living facility,
15 or a community program or to any appropriate course of treatment, which may include housing or residential
16 requirements or conditions as provided in 53-21-149, for a period of:

17 (i) not more than 3 months; or

18 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the
19 community rather than a more restrictive placement in the state hospital if a respondent has been previously
20 involuntarily committed for inpatient treatment in a mental health facility and the court determines that the
21 admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as
22 provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

23 (c) commit the respondent to the Montana mental health nursing care center for a period of not more
24 than 3 months if the following conditions are met:

25 (i) the respondent meets the admission criteria of the center as described in 53-21-411 and established
26 in administrative rules of the department; and

27 (ii) the superintendent of the center has issued a written authorization specifying a date and time for
28 admission.

29 (4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect
30 the respondent's custody or course of treatment for a period of more than 3 months.

1 (5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least
2 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

3 (6) The court may authorize the chief medical officer of a facility or a physician designated by the court
4 to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to
5 protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily
6 administered to a patient unless the chief medical officer of the facility or a physician designated by the court
7 approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review
8 committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible,
9 within 5 working days after the beginning of the involuntary administration. The medication review committee must
10 include at least one person who is not an employee of the facility or program. The patient and the patient's
11 attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of
12 the review and must be allowed to appear and give testimony and evidence. The involuntary administration of
13 medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary
14 administration if medication is still being involuntarily administered. The mental disabilities board of visitors and
15 the director of the department of public health and human services must be fully informed of the matter within 5
16 working days after the beginning of the involuntary administration. The director shall report to the governor on
17 an annual basis.

18 (7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this
19 chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require
20 commitment only to a community facility, which may include a category D assisted living facility, or a program or
21 an appropriate course of treatment, as provided in subsection (3)(b), and may not require commitment at the state
22 hospital, a behavioral health inpatient facility, or the Montana mental health nursing care center.

23 (8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

24 (a) a detailed statement of the facts upon which the court found the respondent to be suffering from a
25 mental disorder and requiring commitment;

26 (b) the alternatives for treatment that were considered;

27 (c) the alternatives available for treatment of the respondent;

28 (d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

29 (e) the name of the facility, program, or individual to be responsible for the management and supervision
30 of the respondent's treatment;

1 (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen
2 from among other alternatives;

3 (g) if the order commits the respondent to the Montana mental health nursing care center, a finding that
4 the respondent meets the admission criteria of the center and that the superintendent of the center has issued
5 a written authorization specifying a date and time for admission;

6 (h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living
7 facility, a finding that indicates whether:

8 (i) the respondent meets the admission criteria;

9 (ii) there is availability in a category D assisted living facility; and

10 (iii) a category D assisted living facility is the least restrictive environment because the respondent is
11 unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

12 ~~(h)~~(i) if the order includes involuntary medication, the reason involuntary medication was chosen from
13 among other alternatives."
14

15 **Section 7.** Section 53-21-181, MCA, is amended to read:

16 **"53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.**

17 (1) (a) At any time within the period of commitment provided for in 53-21-127, the patient may be discharged on
18 the written order of the professional person in charge of the patient.

19 (b) If the patient is not discharged within the period of commitment and if the term is not extended as
20 provided for in 53-21-128, ~~the~~ a patient whose commitment was to a facility other than a category D assisted living
21 facility must be discharged by the facility at the end of the period of commitment without further order of the court.

22 (c) A patient who was committed to a category D assisted living facility may be discharged from
23 supervision by the court but may remain as a resident if the category D assisted living facility and the patient
24 agree.

25 (2) Notice of the discharge must be filed with the court and the county attorney at least 5 days prior to
26 the discharge.

27 ~~(2)~~(3) Upon being discharged, each patient ~~has~~ has a right to be referred, as appropriate, to other providers
28 of mental health services."
29

30 **Section 8.** Section 53-21-198, MCA, is amended to read:

1 **"53-21-198. Extension of conditions of release -- hearing.** (1) ~~(a) Conditions~~ Subject to the provisions
2 of subsection (1)(b), conditions of release may be extended by the district court beyond the expiration date of the
3 order committing the patient under 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that
4 date, upon a showing by clear and convincing evidence that:

5 ~~(a)(i)~~ continuation of the conditions of release is necessary to prevent the deterioration of the patient's
6 mental disorder; and

7 ~~(b)(ii)~~ the deterioration will predictably result in the necessity of further inpatient care for the patient.
8 Predictability may be established by the patient's medical history.

9 (b) The 2-year limit beyond the expiration date of a commitment order under 53-21-127 does not apply
10 to a patient who was diverted from the Montana state hospital or the Montana mental health nursing care center
11 to a category D assisted living facility, subject to completion of the evaluation required under subsection (2).

12 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127
13 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person
14 responsible for the patient's case may petition the court for extension of the conditions of release. The petition
15 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report
16 must describe any tests and evaluation devices that have been employed in evaluating the patient, the course
17 of treatment that has been undertaken for the patient, and the future course of treatment anticipated by the
18 professional person.

19 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the
20 patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, if any,
21 and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention
22 ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date
23 not more than 10 days from the receipt of the request and notify the same people, including the professional
24 person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the
25 conditions of release for a period not to exceed 6 months.

26 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on
27 a rehospitalization petition pursuant to 53-21-197. However, in an extension proceeding, the finding required is
28 that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which
29 the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs
30 in the initial commitment proceeding.

1 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been made,
2 the conditions of release may not be extended, except as provided in subsection (1)(b). If the court finds that the
3 required showing has been made, the court may extend the conditions of release as recommended by the
4 professional person. In its order, the court shall describe what alternatives for treatment of the patient are
5 available, what alternatives were investigated, and why the investigated alternatives were not considered suitable.
6 The court may not order continuation of an alternative that does not include a comprehensive, individualized plan
7 of treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative must
8 include a specific finding that a comprehensive, individualized plan of treatment exists.

9 (6) Further extensions may be obtained under the same procedure described in this section. However,
10 the patient's custody may not be affected for more than 1 year without a renewal of the extension under the
11 procedures set forth in this section, including a hearing and a statement of the findings required by subsection
12 (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1),
13 subject to the exception in subsection (1)(b)."

14
15 **NEW SECTION. Section 9. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [section 1].

17 - END -