

HOUSE BILL NO. 387

INTRODUCED BY K. WAGONER, E. MCCLAFFERTY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE CONTINUUM OF CARE FOR
5 PEOPLE WITH DEVELOPMENTAL DISABILITIES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH
6 AND HUMAN SERVICES TO ESTABLISH CONTINUED USE OF A 12-BED INTENSIVE BEHAVIOR CENTER
7 SECURE FACILITY AS A COMPONENT OF THE CONTINUUM OF CARE; EXTENDING THE CLOSURE DATE
8 FOR THE MONTANA DEVELOPMENTAL CENTER; ~~EXTENDING THE DATE FOR COURT COMMITMENTS~~
9 ~~TO THE MONTANA DEVELOPMENTAL CENTER; PROVIDING A CAP ON THE CENSUS AT THE MONTANA~~
10 DEVELOPMENTAL CENTER; PROVIDING DIRECTION TO THE DEPARTMENT; PROVIDING DEFINITIONS;
11 PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; ~~PROVIDING RULEMAKING~~
12 AUTHORITY; AMENDING SECTION 1; ~~AMENDING SECTIONS 53-20-125 AND 53-20-129~~ SECTION 53-20-126,
13 MCA; AMENDING SECTIONS 1, ~~3~~, AND 4 3, CHAPTER 444, LAWS OF 2015; REPEALING SECTION 2,
14 CHAPTER 444, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES AND A
15 TERMINATION DATE; ~~AMENDING SECTION 1, CHAPTER 444, LAWS OF 2015.~~"

16

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

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19 NEW SECTION. Section 1. Definitions. As used in this part, the following definitions apply:

- 20 (1) "Center" means the intensive behavior center provided for in [section 2].
21 (2) "Department" means the department of public health and human services provided for in 2-15-2201.
22 (3) "Developmental disability" has the meaning provided in 53-20-102.

23

24 NEW SECTION. Section 2. Intensive behavior center limitations. (1) ~~The department shall establish~~
25 a ~~THERE IS A STATE-OPERATED~~ 12-bed intensive behavior center as a new service for individuals with a
26 developmental disability who are in need of intensive treatment because of continuous or repeated behaviors that
27 pose an imminent risk of serious harm to self or others.

28 (2) The center shall provide a program of active treatment in a secure residential environment. The
29 treatment must:

- 30 (a) address the behavioral issues of each resident; and

1 (b) foster for each resident the transition to and residency in less restrictive service settings.

2 (3) The center may serve only individuals for whom ~~the department has asked a county attorney to file~~
3 THE DEPARTMENT HAS ASKED A COUNTY ATTORNEY TO FILE a petition HAS BEEN FILED alleging the individual is in need
4 of the services and secure setting of the center and requesting that the individual be committed to the center for
5 services ~~through imposition of a community treatment plan as provided in 53-20-124.~~ THE INITIAL PERIOD OF
6 COMMITMENT TO THE CENTER MAY NOT EXCEED 90 DAYS. IF RECOMMITMENT IS SOUGHT PURSUANT TO 53-20-128, EACH
7 SUBSEQUENT RECOMMITMENT PERIOD MAY NOT EXCEED 90 DAYS.

8
9 NEW SECTION. Section 3. Licensing. The intensive behavior center operated pursuant to [sections
10 1 through 4 ~~3 4~~] must be licensed as an intermediate care facility for the developmentally disabled in accordance
11 with 50-5-238.

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13 ~~NEW SECTION. Section 4. Rulemaking authority.~~ The department may adopt rules to carry out
14 [sections 1 through 4], including but not limited to rules for eligibility requirements for admission to the facility.

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16 NEW SECTION. SECTION 4. RULEMAKING AUTHORITY. THE DEPARTMENT MAY ADOPT RULES TO CARRY OUT
17 [SECTIONS 1 THROUGH 4], INCLUDING BUT NOT LIMITED TO RULES FOR ELIGIBILITY REQUIREMENTS FOR ADMISSION TO THE
18 FACILITY.

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20 ~~SECTION 4. SECTION 53-20-125, MCA, IS AMENDED TO READ:~~

21 ~~"53-20-125. Outcome of screening -- recommendation for commitment or imposition of~~
22 ~~community treatment plan -- hearing.~~ (1) A court may commit a person to a residential facility or impose a
23 community treatment plan only if the person:

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

25 ~~(b) is determined to be seriously developmentally disabled and in need of commitment to a residential~~
26 ~~facility or imposition of a community treatment plan by the residential facility screening team, as provided in~~
27 ~~53-20-133, and by a court, as provided in 53-20-129 or in this section.~~

28 ~~(2) After the screening required by 53-20-133, the residential facility screening team shall file its written~~
29 ~~recommendation and report with the court. The report must include the factual basis for the recommendation and~~
30 ~~must describe any tests or evaluation devices that have been employed in evaluating the respondent. The~~

1 residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and
 2 any other party requesting it the social and placement information that the team relied on in making its
 3 determination.

4 ~~_____ (3) The residential facility team may recommend commitment to a specific residential facility.~~

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

6 ~~_____ (a) the respondent;~~

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

8 ~~_____ (c) the responsible person;~~

9 ~~_____ (d) the respondent's advocate, if any;~~

10 ~~_____ (e) the county attorney;~~

11 ~~_____ (f) the residential facility to which the residential facility screening team has recommended commitment;~~

12 ~~_____ (g) the attorney for the respondent, if any; and~~

13 ~~_____ (h) the attorney for the parents or guardian, if any.~~

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

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

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

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

22 ~~_____ (a) If both the residential facility screening team and the court find that the respondent is seriously~~
 23 ~~developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent~~
 24 ~~committed to a residential facility for an extended course of treatment and habilitation, subject to the provisions~~
 25 ~~of subsection (12).~~

26 ~~_____ (b) If both the residential facility screening team and the court find that the respondent is seriously~~
 27 ~~developmentally disabled but either the residential facility screening team or the court finds that a less restrictive~~
 28 ~~community treatment plan has been proposed, the court may impose a community treatment plan that meets the~~
 29 ~~conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties~~
 30 ~~or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4),~~

1 it may order the respondent committed to a residential facility. The court may not impose a community treatment
 2 plan unless the residential facility screening team certifies that all services in the proposed plan meet the
 3 conditions of 53-20-133(4)(c) and (4)(d):

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

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

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

14 ~~——— (i) issue an order committing the respondent to the residential facility for an extended period of treatment~~
 15 ~~and habilitation;~~

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

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

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

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

23 ~~——— (11) A court order entered in a proceeding under this part must be provided to the residential facility~~
 24 ~~screening team.~~

25 ~~——— (12) (a) A court may not commit a respondent to a residential facility unless the facility has confirmed in~~
 26 ~~writing that admission of the respondent will not cause the census at the residential facility to exceed its licensed~~
 27 ~~capacity.~~

28 ~~——— (b) After December 31, 2016 March 31, 2019, a court may not commit a respondent to the Montana~~
 29 ~~developmental center."~~

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1 ~~SECTION 5. SECTION 53-20-129, MCA, IS AMENDED TO READ:~~

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

7 ~~(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities~~
8 ~~professional.~~

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

12 ~~(b) After December 31, 2016 March 31, 2019, an emergency admission may not be made to the Montana~~
13 ~~developmental center.~~

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

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

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

22 ~~(7) Once the report of the residential facility screening team is received by the court, continued~~
23 ~~placement in the residential facility or continued imposition of the temporary community treatment plan may not~~
24 ~~continue without an order of the court for emergency commitment or continued imposition of the community~~
25 ~~treatment plan.~~

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

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

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

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8 **SECTION 5. SECTION 53-20-126, MCA, IS AMENDED TO READ:**

9 **"53-20-126. Maximum period of commitment or treatment plan.** The court order approving the
 10 commitment to a residential facility or the imposition of the community treatment plan must specify the maximum
 11 period of time for which the person is committed or for which a community treatment plan is imposed. ~~The~~ EXCEPT
 12 AS PROVIDED IN [SECTION 2] FOR AN INDIVIDUAL COMMITTED TO THE INTENSIVE BEHAVIOR CENTER, THE maximum period
 13 may not exceed 90 days for commitment to a residential facility or 1 year for the imposition of a community
 14 treatment plan."

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16 **Section 6.** Section 1, Chapter 444, Laws of 2015, is amended to read:

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

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

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

26 (3) ~~transition most residents out of the Montana developmental center and into community-based~~
 27 ~~services by December 31, 2016. As part of this transition, the legislature intends for the department of public~~
 28 ~~health and human services to:~~

29 ~~———— (a) actively pursue the timely discharge of Montana developmental center residents into~~
 30 ~~community-based services; and~~

1 ~~———— (b) work with community providers to develop necessary services.~~

2 (3) CAP THE CENSUS AT THE MONTANA DEVELOPMENTAL CENTER AT 24 RESIDENTS AND CONTINUE TO
3 TRANSITION RESIDENTS OUT OF THE MONTANA DEVELOPMENTAL CENTER AND INTO COMMUNITY-BASED SERVICES. AS
4 PART OF THIS TRANSITION, THE LEGISLATURE INTENDS FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
5 TO:

6 (A) ACTIVELY PURSUE THE TIMELY DISCHARGE OF MONTANA DEVELOPMENTAL CENTER RESIDENTS INTO
7 COMMUNITY-BASED SERVICES; AND

8 (B) WORK WITH COMMUNITY PROVIDERS TO DEVELOP NECESSARY SERVICES; AND

9 (C) CAP THE CENSUS AT THE INTENSIVE BEHAVIOR CENTER PROVIDED FOR IN [SECTION 2] AT 12 RESIDENTS
10 AFTER JUNE 30, 2019.

11 ~~(4) BY NO LATER THAN SEPTEMBER 30, 2017, SUBMIT TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES~~
12 ~~A REQUEST FOR AN AMENDMENT TO THE MEDICAID HOME AND COMMUNITY-BASED SERVICES 0208 WAIVER FOR~~
13 ~~INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES THAT, WHILE NOT EXCEEDING THE AMOUNT OF MEDICAID WAIVER~~
14 ~~APPROPRIATIONS IN HOUSE BILL NO. 2:~~

15 ~~———— (A) ALLOWS INDIVIDUALS AND PROVIDERS TO USE THE ENTIRETY OF EACH INDIVIDUAL'S COST PLAN TO PROVIDE~~
16 ~~SERVICES THAT THE INDIVIDUAL NEEDS TO BE SUCCESSFUL IN THE COMMUNITY, INCLUDING A REQUEST TO PAY A DAILY~~
17 ~~RATE RATHER THAN AN HOURLY RATE AS ONE OPTION FOR FULLY USING THE COST PLAN;~~

18 ~~———— (B) PROVIDES THE FLEXIBILITY NECESSARY TO ENABLE THE PROVISION OF PROFESSIONAL SERVICES TO AN~~
19 ~~INDIVIDUAL; AND~~

20 ~~———— (C) PROVIDES A SUFFICIENT NUMBER OF EMERGENCY SLOTS THROUGHOUT MONTANA TO ACCOMMODATE~~
21 ~~INDIVIDUALS WHO MAY GO INTO CRISIS."~~

23 SECTION 7. SECTION 3, CHAPTER 444, LAWS OF 2015, IS AMENDED TO READ:

24 "Section 3. Transition planning -- department ~~Department~~ of public health and human services
25 responsibilities -- rulemaking. The department of public health and human services shall:

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

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

30 ~~———— (3) designate by rule the criteria that a community-based service must meet to be designated as a~~

1 residential facility."

2

3 ~~SECTION 8. SECTION 4, CHAPTER 444, LAWS OF 2015, IS AMENDED TO READ:~~

4 ~~"Section 4. Transfer fee. The department of public health and human services shall assess a fee of~~
5 ~~\$1,000 \$1,100 on a provider of community-based services who returns an individual to the Montana~~
6 ~~developmental center within 90 days after accepting the individual for community-based services."~~

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8 NEW SECTION. Section 8. Direction to department of public health and human services
9 concerning closure of Montana developmental center --REPORT TO LEGISLATURE. The legislature directs the
10 department of public health and human services to:

11 (1) USE THE ASSESSMENT AND STABILIZATION UNIT AT THE MONTANA DEVELOPMENTAL CENTER CAMPUS AS THE
12 INTENSIVE BEHAVIOR CENTER PROVIDED FOR IN [SECTION 2];

13 (2) continue to actively discharge individuals from the Montana developmental center during the
14 biennium beginning July 1, 2017; and to; AND

15 ~~(3) REPORT TO THE 2019 LEGISLATURE ON:~~

16 ~~(A) THE AVAILABILITY OF CRISIS SERVICES IN THE COMMUNITY, INCLUDING ANY UNMET NEED FOR CRISIS SERVICES~~
17 ~~AND THE DEPARTMENT'S PLANS FOR MEETING THAT NEED;~~

18 ~~(B) THE STATUS OF THE CLOSURE EFFORTS; AND~~

19 ~~(C) RECOMMENDATIONS FOR COMPLETING CLOSURE OF THE MONTANA DEVELOPMENTAL CENTER, INCLUDING~~
20 ~~RECOMMENDATIONS FOR ANY LEGISLATIVE ACTION NEEDED; AND~~

21 (4)(3) close the Montana developmental center on or before June 30, 2019. THE DEPARTMENT IS
22 AUTHORIZED TO USE TWO OF THE COTTAGES LOCATED ON THE CAMPUS OF THE MONTANA DEVELOPMENTAL CENTER FOR
23 RESIDENTIAL PURPOSES UNTIL JUNE 30, 2018, AND IS AUTHORIZED TO USE ONE COTTAGE FOR RESIDENTIAL PURPOSES
24 UNTIL JUNE 30, 2019.

25

26 ~~NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified~~
27 ~~as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [sections 1 through~~
28 ~~4].~~

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30 NEW SECTION. SECTION 9. REPEALER. SECTION 2, CHAPTER 444, LAWS OF 2015, IS REPEALED.



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NEW SECTION. SECTION 10. APPROPRIATION. THERE IS APPROPRIATED \$500,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE FISCAL YEAR BEGINNING JULY 1, 2017, FOR A BOULDER DEVELOPMENT FUND TO BE ADMINISTERED BY THE DIRECTOR OF THE DEPARTMENT.

NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 4] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 20, AND THE PROVISIONS OF TITLE 53, CHAPTER 20, APPLY TO [SECTIONS 1 THROUGH 4].

NEW SECTION. SECTION 12. Effective date. ~~[This act]~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] is effective on passage and approval.

(2) [SECTION 10] IS EFFECTIVE JULY 1, 2017.

~~NEW SECTION. SECTION 12. TERMINATION. [SECTIONS 1 THROUGH 3] TERMINATE JUNE 30, 2019.~~

- END -