

SENATE BILL NO. 61

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING INPATIENT BEHAVIORAL HEALTH TREATMENT SERVICES PROVIDED WITHIN CERTAIN FACILITIES OPERATED BY OR CONTRACTING WITH THE DEPARTMENT OF CORRECTIONS TO BE LICENSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; EXPANDING THE DEPARTMENT OF PUBLIC HEALTH AND SERVICES' RULEMAKING AUTHORITY; PROVIDING A TRANSITION; AND AMENDING SECTIONS 50-5-101, 50-5-103, AND 53-24-204, MCA."

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

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

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

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

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

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

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

(b) As used in this subsection (5), the following definitions apply:



- 1 (i) "Aged person" means a person as defined by department rule as aged.
- 2 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult
3 so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available
4 to meet those basic needs.
- 5 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department
6 rule as disabled.
- 7 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
8 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
9 administration.
- 10 (B) The term does not include the administration of prescriptive medications.
- 11 (6) "Affected person" means an applicant for a certificate of need, a health care facility located in the
12 geographic area affected by the application, an agency that establishes rates for health care facilities, or a
13 third-party payer who reimburses health care facilities in the area affected by the proposal.
- 14 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal
15 care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related
16 services.
- 17 (8) "Capital expenditure" means:
- 18 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
19 accounting principles, is not properly chargeable as an expense of operation and maintenance; or
- 20 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any
21 other property of value had changed hands.
- 22 (9) "Certificate of need" means a written authorization by the department for a person to proceed with
23 a proposal subject to 50-5-301.
- 24 (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
25 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
26 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
27 welfare, or safety.
- 28 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
29 radioassay, cytological, immunohematological, pathological, or other examination of materials derived from
30 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease

1 or assessment of a medical condition.

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

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

8 (14) "Comparative review" means a joint review of two or more certificate of need applications that are
9 determined by the department to be competitive in that the granting of a certificate of need to one of the
10 applicants would substantially prejudice the department's review of the other applications.

11 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
12 persons who require supportive services and housing.

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

15 (17) "Council on accreditation" means the organization nationally recognized by that name that surveys
16 behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and
17 mental health centers upon their requests and grants accreditation status to programs and facilities that it finds
18 meet its standards and requirements.

19 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
20 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
21 50-5-233.

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

23 (20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys
24 hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and
25 requirements.

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

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

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

1 (24) "Healthcare facilities accreditation program" means the program nationally recognized by that name
2 that surveys health care facilities upon their requests and grants accreditation status to a health care facility that
3 it finds meets its standards and requirements.

4 (25) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private
5 or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to
6 provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The
7 term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home
8 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
9 intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers,
10 outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care
11 facilities, and residential treatment facilities. The term includes all or a portion of a community corrections facility
12 or treatment facility if the facility is operated by or contracts with the department of corrections and:

13 (i) if the function of the facility or a portion of the facility is the inpatient treatment, rehabilitation, and
14 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
15 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
16 welfare, or safety; or

17 (ii) if the facility or a portion of the facility provides inpatient services for the prevention or diagnosis of
18 mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
19 combination of these services.

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

22 (26) "Home health agency" means a public agency or private organization or subdivision of the agency
23 or organization that is engaged in providing home health services to individuals in the places where they live.
24 Home health services must include the services of a licensed registered nurse and at least one other therapeutic
25 service and may include additional support services.

26 (27) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
27 services.

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

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

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

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

10 (30) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services
11 for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as
12 otherwise provided by law, services provided must include medical personnel available to provide emergency
13 care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has
14 an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and
15 provides 24-hour nursing care by licensed registered nurses. The term includes:

16 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
17 tubercular patients; and

18 (ii) specialty hospitals.

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

20 (c) The emergency care requirement for a hospital that specializes in providing health services for
21 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
22 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed
23 registered nurses.

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

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

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

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

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

1 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
2 52-4-203.

3 (33) "Intermediate developmental disability care" means the provision of intermediate nursing care
4 services, health-related services, and social services for persons with a developmental disability, as defined in
5 53-20-102, or for persons with related problems.

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

8 (35) "Licensed health care professional" means a licensed physician, physician assistant, advanced
9 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
10 department of labor and industry.

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

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

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

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

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

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

1 combination of these services.

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

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

5 (41) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
6 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
7 of a youth and that:

8 (i) serves either adjudicated or nonadjudicated youth;

9 (ii) charges a fee for its services; and

10 (iii) provides all or part of its services in the outdoors.

11 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts,
12 4-H clubs, or other similar organizations.

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

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

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

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

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

25 (47) "Practitioner" means an individual licensed by the department of labor and industry who has
26 assessment, admission, and prescription authority.

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

29 (49) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the
30 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological

1 and social services, or vocational evaluation and training or any combination of these services and in which the
2 major portion of the services is furnished within the facility.

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

4 (51) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
5 living facility, or a retirement home.

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

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

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

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

17 (56) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,
18 care, or treatment of one or more of the following categories:

19 (i) patients with a cardiac condition;

20 (ii) patients with an orthopedic condition;

21 (iii) patients undergoing a surgical procedure; or

22 (iv) patients treated for cancer-related diseases and receiving oncology services.

23 (b) For purposes of this subsection (56), a specialty hospital may provide other services for medical
24 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
25 if the care encompasses 35% or less of the hospital services.

26 (c) The term "specialty hospital" does not include:

27 (i) psychiatric hospitals;

28 (ii) rehabilitation hospitals;

29 (iii) children's hospitals;

30 (iv) long-term care hospitals; or

1 (v) critical access hospitals.

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

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

7 (59) "The joint commission" means the organization nationally recognized by that name that surveys
8 health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets
9 its standards and requirements."

10

11 **Section 2.** Section 50-5-103, MCA, is amended to read:

12 **"50-5-103. Rules and standards -- accreditation.** (1) (a) The department shall adopt rules and
13 minimum standards for implementation of parts 1 and 2.

14 (b) The rules and minimum standards must include specialized standards that reflect evidence-based
15 practices for criminal justice-involved populations when a facility provides inpatient services for those populations.

16 (2) Any facility covered by this chapter shall comply with the state and federal requirements relating to
17 construction, equipment, and fire and life safety.

18 (3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon
19 adoption.

20 (4) (a) Any hospital located in this state that furnishes written evidence required by the department,
21 including the recommendation for future compliance statements, to the department of its accreditation granted
22 by an entity listed in subsection (4)(b) is eligible for licensure in the state for the accreditation period and may not
23 be subjected to an inspection by the department for purposes of the licensing process.

24 (b) A hospital may provide evidence of its accreditation by:

25 (i) DNV healthcare, inc.;

26 (ii) the healthcare facilities accreditation program; or

27 (iii) the joint commission.

28 (c) The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health
29 care facility to answer specific complaints made in writing by any person against the facility when the complaints
30 pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing

1 pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which
2 the complaint pertains.

3 (5) The department may consider as eligible for licensure during the accreditation period any health care
4 facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation
5 for future compliance statements, of its accreditation by the joint commission. The department may inspect a
6 health care facility considered eligible for licensure under this section to ensure compliance with state licensure
7 standards.

8 (6) The department may consider as eligible for licensure during the accreditation period any
9 rehabilitation facility that furnishes written evidence, including the recommendation for future compliance
10 statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The
11 department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure
12 compliance with state licensure standards.

13 (7) The department may consider as eligible for licensure during the accreditation period any outpatient
14 center for surgical services that furnishes written evidence, including the recommendation for future compliance
15 statements, of accreditation of its programs by the accreditation association for ambulatory health care. The
16 department may inspect an outpatient center for surgical services considered eligible for licensure under this
17 section to ensure compliance with state licensure standards.

18 (8) The department may consider as eligible for licensure during the accreditation period any behavioral
19 treatment program, chemical dependency treatment program, residential treatment facility, or mental health
20 center that furnishes written evidence, including the recommendation for future compliance statements, of
21 accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment
22 program, chemical dependency treatment program, residential treatment facility, or mental health center
23 considered eligible for licensure under this section to ensure compliance with state licensure standards."
24

25 **Section 3.** Section 53-24-204, MCA, is amended to read:

26 **"53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

27 (a) accept gifts, grants, and donations of money and property from public and private sources;

28 (b) enter into contracts;

29 (c) acquire and dispose of property.

30 (2) The department shall:

- 1 (a) approve treatment facilities as provided for in 53-24-208;
- 2 (b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this
3 plan each biennium;
- 4 (c) provide for and conduct statewide service system evaluations;
- 5 (d) distribute state and federal funds to the counties for approved treatment programs in accordance with
6 the provisions of 53-24-108 and 53-24-206;
- 7 (e) plan in conjunction with approved programs and provide for training of program personnel delivering
8 services to persons with a chemical dependency;
- 9 (f) establish criteria to be used for the development of new programs;
- 10 (g) encourage planning for the greatest use of funds by discouraging duplication of services, encouraging
11 efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or
12 contract with urban programs for services;
- 13 (h) cooperate with the department of corrections and the board of pardons and parole in establishing
14 and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency
15 in or on parole from penal institutions, including community corrections facilities and prerelease centers;
- 16 (i) establish standards for chemical dependency educational courses provided by state-approved
17 treatment programs and approve or disapprove the courses; and
- 18 (j) assist all interested public agencies and private organizations in developing education and prevention
19 programs for chemical dependency."
20

21 **NEW SECTION. Section 4. Transition.** A facility that is required to be licensed under [this act] must
22 be licensed and conform with the rules and standards required by [this act] within 1 year of the effective date of
23 the rules and standards promulgated by the department of public health and human services as required in
24 50-5-103.

25 - END -