

HOUSE BILL NO. 537

INTRODUCED BY M. REGIER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTIFICATES OF NEED TO INCLUDE ONLY LONG-TERM CARE FACILITIES; REVISING DEFINITIONS; AND AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-307, AND 50-5-308, 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:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

1 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department
2 rule as disabled.

3 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
4 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
5 administration.

6 (B) The term does not include the administration of prescriptive medications.

7 (6) "Affected person" means an applicant for a certificate of need, a ~~health~~ long-term care facility located
8 in the geographic area affected by the application, an agency that establishes rates for ~~health~~ long-term care
9 facilities, or a third-party payer who reimburses ~~health~~ long-term care facilities in the area affected by the
10 proposal.

11 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal
12 care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related
13 services.

14 (8) "Capital expenditure" means:

15 (a) an expenditure made by or on behalf of a ~~health~~ long-term care facility that, under generally accepted
16 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

17 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any
18 other property of value had changed hands.

19 (9) "Certificate of need" means a written authorization by the department for a person to proceed with
20 a proposal subject to 50-5-301.

21 (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
22 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
23 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
24 welfare, or safety.

25 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
26 radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from
27 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease
28 or assessment of a medical condition.

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

1 and requirements.

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

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

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

10 (16) "Construction" means the physical erection of a health care facility or a long-term care facility under
11 part 3 of this chapter and any stage of the physical erection, including groundbreaking, or remodeling,
12 replacement, or renovation of an existing health care facility or a long-term care facility under part 3 of this
13 chapter.

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

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

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

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

25 (21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

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

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

29 (24) "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 (25) "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 (26) (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, eating disorder centers, end-stage renal
8 dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries,
9 long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities,
10 mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation
11 facilities, residential care facilities, and residential treatment facilities.

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

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

18 (28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
19 services.

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

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

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

30 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that

1 can house three or more hospice patients.

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

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

10 (ii) specialty hospitals.

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

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

16 (32) "Infirmarary" means a facility located in a university, college, government institution, or industry for the
17 treatment of the sick or injured, with the following subdefinitions:

18 (a) an "infirmarary--A" provides outpatient and inpatient care;

19 (b) an "infirmarary--B" provides outpatient care only.

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

22 (b) The term does not include community homes for persons with developmental disabilities that are
23 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
24 52-4-203.

25 (34) "Intermediate developmental disability care" means the provision of intermediate nursing care
26 services, health-related services, and social services for persons with a developmental disability, as defined in
27 53-20-102, or for persons with related problems.

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

30 (36) "Licensed health care professional" means a licensed physician, physician assistant, advanced

1 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
2 department of labor and industry.

3 (37) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,
4 residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more
5 individuals or that provides personal care.

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

11 (38) "Medical assistance facility" means a facility that meets both of the following:

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

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

21 (39) "Mental health center" means a facility providing services for the prevention or diagnosis of mental
22 illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
23 combination of these services.

24 (40) "Nonprofit health care facility" means a health care facility owned or operated by one or more
25 nonprofit corporations or associations.

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

27 (42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
28 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
29 of a youth and that:

30 (i) serves either adjudicated or nonadjudicated youth;

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

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

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

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

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

11 (45) "Patient" means an individual obtaining services, including skilled nursing care, from a health care
12 facility.

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

15 (47) "Personal care" means the provision of services and care for residents who need some assistance
16 in performing the activities of daily living.

17 (48) "Practitioner" means an individual licensed by the department of labor and industry who has
18 assessment, admission, and prescription authority.

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

21 (50) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the
22 rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological
23 and social services, or vocational evaluation and training or any combination of these services and in which the
24 major portion of the services is furnished within the facility.

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

26 (52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
27 living facility, or a retirement home.

28 (53) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment
29 facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral
30 dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's

1 condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge
2 to less restrictive levels of care at the earliest possible time.

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

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

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

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

11 (i) patients with a cardiac condition;

12 (ii) patients with an orthopedic condition;

13 (iii) patients undergoing a surgical procedure; or

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

15 (b) For purposes of this subsection (57), a specialty hospital may provide other services for medical
16 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
17 if the care encompasses 35% or less of the hospital services.

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

19 (i) psychiatric hospitals;

20 (ii) rehabilitation hospitals;

21 (iii) children's hospitals;

22 (iv) long-term care hospitals; or

23 (v) critical access hospitals.

24 (58) "State health care facilities plan" means the plan prepared by the department to project the need for
25 health care facilities within Montana and approved by the governor and a statewide health coordinating council
26 appointed by the director of the department.

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

29 (60) "The joint commission" means the organization nationally recognized by that name that surveys
30 health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets

1 its standards and requirements."

2

3 **Section 2.** Section 50-5-301, MCA, is amended to read:

4 **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an
5 application for and is the holder of a certificate of need granted by the department, the person may not initiate
6 any of the following:

7 (a) the incurring of an obligation by or on behalf of a ~~health~~ long-term care facility for any capital
8 expenditure that exceeds \$1.5 million, other than to acquire an existing ~~health~~ long-term care facility. The costs
9 of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff
10 effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any
11 plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds
12 \$1.5 million.

13 (b) a change in the bed capacity of a ~~health~~ long-term care facility through an increase in the number
14 of beds or a relocation of beds from one ~~health~~ long-term care facility or site to another, unless:

15 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded
16 down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during
17 the 2 years prior to the date on which the letter of intent for the proposal is received;

18 (ii) a letter of intent is submitted to the department; and

19 (iii) the department determines that the proposal will not significantly increase the cost of care provided
20 or exceed the bed need projected in the state health care facilities plan;

21 (c) the addition of a health service that is offered by or on behalf of a ~~health~~ long-term care facility that
22 was not offered by or on behalf of the facility within the 12-month period before the month in which the service
23 would be offered and that will result in additional annual operating and amortization expenses of \$150,000 or
24 more;

25 (d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or
26 more of an existing ~~health~~ long-term care facility unless:

27 (i) the person submits the letter of intent required by 50-5-302(2); and

28 (ii) the department finds that the acquisition will not significantly increase the cost of care provided or
29 increase bed capacity;

30 (e) the construction, development, or other establishment of a ~~health~~ long-term care facility that is being

1 replaced or that did not previously exist, by any person, including another type of ~~health~~ long-term care facility;
 2 ~~(f) the expansion of the geographical service area of a home health agency;~~
 3 ~~(g)(f) the use of hospital beds in excess of five to provide services to patients or residents needing only~~
 4 ~~skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of~~
 5 ~~care are defined in 50-5-101; or~~
 6 ~~(h)(g) the provision by a hospital of services for home health care, long-term care, or inpatient chemical~~
 7 ~~dependency treatment; or~~
 8 ~~———(i) the construction, development, or other establishment of a facility for ambulatory surgical care through~~
 9 ~~an outpatient center for surgical services in a county with a population of 20,000 or less according to the most~~
 10 ~~recent federal census or estimate.~~

11 (2) For purposes of this part, the following ~~definitions apply~~ definition applies:

12 ~~———(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility,~~
 13 ~~or an inpatient chemical dependency facility. The term does not include:~~

14 ~~———(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant~~
 15 ~~to subsection (1)(h);~~

16 ~~———(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including~~
 17 ~~licensed addiction counselors; or~~

18 ~~———(iii) a rehabilitation facility or an outpatient center for surgical services.~~

19 ~~———(b) (i)(a) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing~~
 20 ~~care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.~~

21 ~~(ii)(b) The term does not include residential care facilities, as defined in 50-5-101; community homes for~~
 22 ~~persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe~~
 23 ~~disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels,~~
 24 ~~motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or~~
 25 ~~individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the~~
 26 ~~authority of the department of corrections.~~

27 ~~(3) This section may not be construed to require a health care facility to obtain a certificate of need for~~
 28 ~~a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than~~
 29 ~~a health care facility."~~

30

1 **Section 3.** Section 50-5-302, MCA, is amended to read:

2 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules
3 including but not limited to rules for:

4 (a) the form and content of letters of intent and applications;

5 (b) the scheduling of reviews;

6 (c) the format of public informational hearings and reconsideration hearings;

7 (d) the circumstances under which applications may be comparatively reviewed; and

8 (e) the circumstances under which a certificate of need may be approved for the use of hospital beds
9 to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients
10 or residents needing only that level of care.

11 (2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more
12 of an existing ~~health~~ long-term care facility, they shall submit to the department a letter noting intent to acquire
13 the facility and of the services to be offered in the facility and its bed capacity.

14 (3) Any person intending to initiate an activity for which a certificate of need is required shall submit a
15 letter of intent to the department.

16 (4) The department may determine that the proposals should be comparatively reviewed with similar
17 proposals that are also subject to review.

18 (5) On the 10th day of each month, the department shall publish in a newspaper of general circulation
19 in the area to be served by the proposal a description of each letter of intent received by the department during
20 the preceding calendar month. Within 30 days of the publication, any person who desires comparative review with
21 a proposal described in the publication must submit a letter of intent requesting comparative review.

22 (6) The department shall give to each person submitting a letter of intent written notice of the deadline
23 for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

24 (7) Within 20 working days after receipt of an application, the department shall determine whether it is
25 complete and, if the application is found incomplete, shall send a written request to the applicant specifying the
26 necessary additional information and a date by which the additional information must be submitted to the
27 department. The department shall allow at least 15 days after the mailing of its written request for the submission
28 of the additional information. Upon receipt of the additional information from the applicant, the department has
29 an additional 15 working days to determine if the application is complete and, if the application is still incomplete,
30 to send a notice to the applicant that the application is incomplete.

1 (8) If the applicant fails to submit the necessary additional information requested by the department by
2 the deadline prescribed by the department, the application is considered withdrawn.

3 (9) If the department fails to send either the request for additional information or the notice of
4 incompleteness required by subsection (7) within the period prescribed in subsection (7), the application is
5 considered to be complete on the last day of the time period during which the notice should have been sent.

6 (10) The review period for an application may be no longer than 90 calendar days after the application
7 is initially received or, if the application is to be comparatively reviewed as provided in subsection (5), within 90
8 days after all applications to be comparatively reviewed are received. A longer period is permitted with the
9 consent of all affected applicants.

10 (11) During the review period a public hearing may be held if requested by an affected person or when
11 considered appropriate by the department.

12 (12) Each completed application may be considered in relation to other applications pertaining to similar
13 types of facilities affecting the same health service area.

14 (13) The department shall, after considering all comments received during the review period, issue a
15 certificate of need, with or without conditions, or deny the application. The department shall notify the applicant
16 and affected persons of its decision within 5 working days after expiration of the review period.

17 (14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines
18 established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may
19 apply to district court for a writ of mandamus to force the department to issue the certificate of need."
20

21 **Section 4.** Section 50-5-307, MCA, is amended to read:

22 **"50-5-307. Civil penalty -- injunction.** (1) A person who violates the terms of 50-5-301 is subject to a
23 civil penalty of not less than \$1,000 or more than \$10,000. Each day of violation constitutes a separate offense.
24 The department or, upon request of the department, the county attorney of the county where the ~~health~~ long-term
25 care facility in question is located may petition the district court to impose, assess, and recover the civil penalty.
26 Money collected as a civil penalty shall be deposited in the state general fund.

27 (2) The department or, upon request of the department, the county attorney of the county where the
28 ~~health~~ long-term care facility in question is located may bring an action to enjoin a violation of 50-5-301, in
29 addition to or exclusive of the remedy in subsection (1)."
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