

1 HOUSE BILL NO. 509
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 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NONPROFIT HOSPITAL COMMUNITY
 6 BENEFIT LAWS; REQUIRING HOSPITALS TO REPORT HOW COMMUNITY BENEFIT SPENDING
 7 RELATES TO COMMUNITY HEALTH NEEDS ASSESSMENTS; ESTABLISHING REQUIREMENTS FOR
 8 CERTAIN ELEMENTS RELATED TO CHARITY CARE AND COMMUNITY BENEFITS; PROVIDING
 9 RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 50-5-101, 50-5-106,
 10 50-5-112, AND 50-5-121, MCA."
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13

14 NEW SECTION. **Section 1. Nonprofit hospital charity care and community benefit -- objectives**

15 **and key results.** (1) The charity care and community benefit plans required under 50-5-106 must:

- 16 (a) specify objectives for each type of financial assistance and community benefit activity a
 17 nonprofit hospital plans to provide during the year;
- 18 (b) identify the key results for each objective and how the hospital will measure the degree of
 19 progress in attaining the results; and
- 20 (c) indicate how each activity corresponds to meeting the needs identified in the community health
 21 needs assessment the hospital conducted as required under 26 U.S.C. 501(r)(3).

22 (2) A nonprofit hospital shall include in the charity care and community benefit reports required
 23 under 50-5-106 the objectives and key results that it included in the plans for the year and the degree to which
 24 it attained the results.
 25

26 **Section 2.** Section 50-5-101, MCA, is amended to read:

27 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly
 28 indicates otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (8) "Capital expenditure" means:

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

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

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

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

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

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

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

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

28 (15) "Congregate" means the provision of group services designed especially for elderly or disabled

1 persons who require supportive services and housing.

2 (16) "Construction" means the physical erection of a new health care facility and any stage of the
3 physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

4 (a) an existing health care facility; or

5 (b) a long-term care facility as defined in 50-5-301.

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

10 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
11 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-
12 5-233.

13 (19) "Department" means the department of public health and human services provided for in 2-15-
14 2201.

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

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

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

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

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

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

27 (26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
28 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or

1 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
2 individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers,
3 end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals,
4 infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical
5 assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical
6 services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

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

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

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

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

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

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

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

28 (31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians,

1 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.

2 Except as otherwise provided by law, services provided must include medical personnel available to provide
3 emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority.

4 A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days
5 a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

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

8 (ii) specialty hospitals.

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

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

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

16 (a) an "infirmery--A" provides outpatient and inpatient care;

17 (b) an "infirmery--B" provides outpatient care only.

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

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

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

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

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

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

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

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

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

20 (b) either is located in a county with fewer than six residents a square mile or is located more than
21 35 road miles from the nearest hospital.

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

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

27 (41) "Nonprofit hospital" means a hospital, critical access hospital, or specialty hospital owned or
28 operated by one or more nonprofit corporations or associations.

1 ~~(41)~~(42) "Offer" means the representation by a health care facility that it can provide specific health
2 services.

3 ~~(42)~~(43) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation,
4 and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational
5 functions of a youth and that:

6 (i) serves either adjudicated or nonadjudicated youth;

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

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

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

11 ~~(43)~~(44) "Outpatient center for primary care" means a facility that provides, under the direction of a
12 licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient
13 center for surgical services.

14 ~~(44)~~(45) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or
15 organization that is specifically designed and operated to provide surgical services to patients not requiring
16 hospitalization and that may include recovery care beds.

17 ~~(45)~~(46) "Patient" means an individual obtaining services, including skilled nursing care, from a health
18 care facility.

19 ~~(46)~~(47) "Person" means an individual, firm, partnership, association, organization, agency, institution,
20 corporation, trust, estate, or governmental unit, whether organized for profit or not.

21 ~~(47)~~(48) "Personal care" means the provision of services and care for residents who need some
22 assistance in performing the activities of daily living.

23 ~~(48)~~(49) "Practitioner" means an individual licensed by the department of labor and industry who has
24 assessment, admission, and prescription authority.

25 ~~(49)~~(50) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24
26 hours by a patient recovering from surgery or other treatment.

27 ~~(50)~~(51) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in
28 the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,

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

3 ~~(54)~~(52) "Resident" means an individual who is in a long-term care facility or in a residential care
4 facility.

5 ~~(52)~~(53) "Residential care facility" means an adult day-care center, an adult foster care home, an
6 assisted living facility, or a retirement home.

7 ~~(53)~~(54) "Residential psychiatric care" means active psychiatric treatment provided in a residential
8 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or
9 behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the
10 individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's
11 discharge to less restrictive levels of care at the earliest possible time.

12 ~~(54)~~(55) "Residential treatment facility" means a facility operated for the primary purpose of providing
13 residential psychiatric care to individuals under 21 years of age.

14 ~~(55)~~(56) "Retirement home" means a building or buildings in which separate living accommodations
15 are rented or leased to individuals who use those accommodations as their primary residence.

16 ~~(56)~~(57) "Skilled nursing care" means the provision of nursing care services, health-related services,
17 and social services under the supervision of a licensed registered nurse on a 24-hour basis.

18 ~~(57)~~(58) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the
19 diagnosis, care, or treatment of one or more of the following categories:

- 20 (i) patients with a cardiac condition;
21 (ii) patients with an orthopedic condition;
22 (iii) patients undergoing a surgical procedure; or
23 (iv) patients treated for cancer-related diseases and receiving oncology services.

24 (b) For purposes of this subsection ~~(57)~~ (58), a specialty hospital may provide other services for
25 medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise
26 provided by law if the care encompasses 35% or less of the hospital services.

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

- 28 (i) psychiatric hospitals;

- 1 (ii) rehabilitation hospitals;
- 2 (iii) children's hospitals;
- 3 (iv) long-term care hospitals; or
- 4 (v) critical access hospitals.

5 ~~(58)~~(59) "State long-term care facilities plan" means the plan prepared by the department to project the
6 need for long-term care facilities within Montana and approved by the governor and a statewide health
7 coordinating council appointed by the director of the department.

8 ~~(59)~~(60) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
9 acute care or extended skilled nursing care to a patient.

10 ~~(60)~~(61) "The joint commission" means the organization nationally recognized by that name that
11 surveys health care facilities upon their requests and grants accreditation status to a health care facility that it
12 finds meets its standards and requirements."

13

14 **Section 3.** Section 50-5-106, MCA, is amended to read:

15 **"50-5-106. Records and reports required of health care facilities -- confidentiality.** (1) Health
16 care facilities shall keep records and make reports as required by the department.

17 (2) Before ~~February 1~~ April 15 of each year, ~~every~~ each licensed health care facility shall submit an
18 annual report for the preceding calendar year to the department.

19 (3) Before April 15 of each year, each nonprofit hospital shall submit to the department:

20 (a) a copy of the hospital's internal revenue service form 990 and form 990 schedule H for the
21 preceding tax year;

22 (b) both a charity care report and a community benefit report for the preceding year that meet the
23 requirements of [section 1] and 50-5-121; and

24 (c) a charity care plan and a community benefit plan for the current calendar year that meet the
25 requirements of [section 1] and 50-5-121.

26 (4) ~~The report~~ Reports required under this section must be on forms specified by the department
27 and may contain additional information specified by the department.

28 (5) Information received by the department through reports, inspections, or provisions of parts 1

1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses
2 information that would identify a patient must be dismissed from employment and subject to the provisions of
3 45-7-401 and 50-16-551, if applicable, unless the disclosure was authorized as permitted by law.

4 (6) Information and statistical reports from health care facilities which are considered necessary by
5 the department for health planning and resource development activities must be made available to the public
6 and the health planning agencies within the state. Applications by health care facilities for certificates of need
7 and any information relevant to review of these applications, pursuant to part 3, must be accessible to the
8 public."

9

10 **Section 4.** Section 50-5-112, MCA, is amended to read:

11 **"50-5-112. Civil penalties.** (1) ~~A~~Except as provided in 50-5-121, a person who commits an act
12 prohibited by 50-5-111 is subject to a civil penalty not to exceed \$1,000 for each day that a facility is in violation
13 of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to
14 part 1 or 2. The department or, upon request of the department, the county attorney of the county in which the
15 health care facility in question is located may petition the court to impose the civil penalty. Venue for an action
16 to collect a civil penalty pursuant to this section is in the county in which the facility is located.

17 (2) In determining the amount of penalty to be assessed for an alleged violation under this section,
18 the court shall consider:

19 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or
20 patient;

21 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

22 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of
23 this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

24 (d) other matters as justice may require.

25 (3) A penalty collected under this section must be deposited in the state general fund.

26 (4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue
27 remedies available for a violation, as provided for in 50-5-108, or any other remedies available to it."

28

1 **Section 5.** Section 50-5-121, MCA, is amended to read:

2 **"50-5-121. Hospital discrimination based on ability to pay prohibited -- charity care and**
3 **community benefit requirements -- rulemaking authority.** (1) ~~(a) Except as provided in subsection (3), a~~

4 hospital must have in writing:

5 ~~(a)~~ a policy applying to all patients, including medicaid and medicare patients, that prohibits
6 discrimination based on a patient's ability to pay; ~~and~~

7 ~~(b)~~ a charity care policy consistent with industry standards applicable to the area the facility serves
8 and the tax status of the hospital.

9 ~~(2)(b)~~ A hospital may not transfer a patient to another hospital or health care facility based on the
10 patient's ability to pay for health care services.

11 (2) A nonprofit hospital must have in writing a charity care policy and a community benefit policy
12 consistent with federal standards and the provisions of this section. The nonprofit hospital shall make the
13 policies available to the public.

14 (3) A nonprofit hospital reporting financial assistance, medicaid services, health professions
15 education, or subsidized health services on schedule H for internal revenue service form 990 shall demonstrate
16 that:

17 (a) any financial assistance reported on the form was provided at no cost to individuals with a
18 family income at or below 300% of the federal poverty level for the year in which the care was provided and at a
19 reduced cost to individuals with a family income above 300% of the federal poverty level and up to 500% of the
20 level;

21 (b) it calculated the amount of financial assistance claimed for medicaid using the actual, not listed,
22 cost of providing the service;

23 (c) it claimed as health professions education only the costs attributable to educational activities
24 that led to licensure of a health care professional. The cost of continuing education may not be counted toward
25 the amount claimed as a community benefit.

26 (d) of the amount reported as subsidized health services, 50% was spent on providing direct
27 mental health care to patients on an individual basis.

28 ~~(3)(4)~~ A specialty hospital must have in writing a charity care policy consistent with industry standards

1 for nonprofit hospitals irrespective of the tax status of the specialty hospital.

2 (5) The department shall adopt rules to implement the charity care and community benefit
3 requirements of this part, including but not limited to rules to establish:

4 (a) the information to be reported and verified to ensure a nonprofit hospital is complying with
5 charity care and community benefit standards of this part; and

6 (b) penalties for failing to comply with 50-5-106, [section 1], and this section. The penalties may be
7 in addition to the penalties provided for in 50-5-112."

8

9 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12 - END -