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As of: 2020/06/02 05:58:53

Drafter: Pad McCracken, 406-444-3595

67th Legislature

PD 0012

**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

**THIS WORKING DRAFT RELATES TO FUNDING FOR THE EDUCATION OF CHILDREN IN CHILDREN'S
PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES AND ISSUE #1 OF THE SCHOOL
FUNDING MEMO FROM THE APRIL 30 EDIC MEETING.**

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING LAWS RELATED TO CHILDREN
IN CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; CLARIFYING
THAT MEDICAID DOES NOT PROVIDE FUNDING FOR THE EDUCATIONAL COSTS OF STUDENTS IN
CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; AMENDING
SECTION 20-7-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction
shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a
planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as
prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a
disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing
special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies
in identifying the special education needs of children, in planning programs, and in admitting and discharging

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children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

~~(13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting, pursuant to 20-7-435, with a public school district or a private residential facility for the provision of appropriate educational opportunity, including provision of a free appropriate public education for a child placed in an in-state residential treatment facility or children's psychiatric hospital."~~

SECTIONS 20-7-435 AND 20-7-436 FOR REFERENCE AND POSSIBLE AMENDMENT

Section 2. Section 20-7-435, MCA, is amended to read:

"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-

Commented [MP1]: The opening exception is misleading and inaccurate and has caused confusion; Medicaid does not pay for educational services (apart from "related services" for special education, like speech, physical, or occupational therapies). Because of this misleading exception, OPI has historically not paid any educational costs for Medicaid-eligible kids in psychiatric hospitals and treatment facilities, leaving the facilities to foot the bill. The changes to this subsection also align this duty of the SPI with the statutes that describe the duty more fully.

Another option would be to strike subsection (13) entirely. 20-7-403 describes the SPI's duties for special education and 20-7-435 is about regular and special education for this group of kids.

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1 **state residential treatment programs for eligible children.** (1) It is the intent of the legislature that eligible
2 children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an
3 appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate
4 public education for an eligible child with a disability that is consistent with state standards for the provision of
5 special education and related services. General education programs for eligible children without disabilities
6 must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

7 (2) The superintendent of public instruction may contract with an in-state children's psychiatric
8 hospital or residential treatment facility for provision of an educational program for an eligible child in the
9 hospital or treatment facility.

10 (3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric
11 hospital or residential treatment facility for provision of an educational program for an eligible child in the
12 children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

13 (a) ensure the provision of a free appropriate public education and an education that is consistent with
14 the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment
15 facility;

16 (b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for
17 providing special education, including the costs of retirement benefits, federal social security system
18 contributions, and unemployment compensation insurance;

19 (c) from appropriations provided for this purpose, fund any approved allowable costs under this
20 section, with the exception of services for which reimbursement is made under any provision of state or federal
21 law or an insurance policy;

22 (d) provide funding for allowable costs according to a proration based on average daily membership.

23 (4) A supplemental education fee or tuition may not be charged for an eligible Montana child who
24 receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or
25 residential treatment facility.

26 (5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in
27 accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible
28 child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under

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1 the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in
2 which the children's psychiatric hospital or residential treatment facility is located for the supervision and
3 implementation of an appropriate educational program that is consistent with accreditation standards provided
4 for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or
5 residential treatment facility. The amount negotiated with the school district must include all education and
6 related services costs that may be negotiated under the provisions of subsection (3) and all education and
7 related services costs necessary to fulfill the requirements of providing the child with an education.

8 (6) Funds provided to a district under this section, including funds received under the provisions of 20-
9 7-420:

10 (a) must be deposited in the miscellaneous programs fund of the district that provides the education
11 program for an eligible child, regardless of the age or grade placement of the child who is served under a
12 negotiated contract; and

13 (b) are not subject to the budget limitations in 20-9-308.

14 (7) The superintendent of public instruction may distribute funds appropriated for contracts with in-
15 state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school
16 districts for the purpose of supporting educational programs for children with significant behavioral or physical
17 needs."

18

19 **Section 3.** Section 20-7-436, MCA, is amended to read:

20 **"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

21 (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

22 (i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis
23 and resulting treatment plan require in-house residential psychiatric care; and

24 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of
25 the centers for medicare and medicaid services, or other comparable accreditation.

26 (b) The term does not include programs for children and youth for whom the treatment of chemical
27 dependency is the primary reason for treatment.

28 (2) "Eligible child" means a Montana resident child or youth who is less than 19 years of age and who

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1 has an emotional problem that is so severe that the child or youth has been placed in a children's psychiatric
2 hospital or residential treatment facility for inpatient treatment of emotional problems.

3 (3) (a) "Residential treatment facility" means a facility in the state that:

4 (i) provides services for children or youth with emotional disturbances;

5 (ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21
6 years of age;

7 (iii) is licensed by the department of public health and human services; and

8 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing
9 psychiatric services to individuals under 21 years of age; or

10 (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of
11 need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to
12 January 1, 1993.

13 (b) The term does not include programs for children and youth for whom the treatment of chemical
14 dependency is the primary reason for treatment."

15

16 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2021.

17

18 - END -