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Children, Families, Health, and Human Services Interim Committee
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MENTAL HEALTH STUDIES: BILL DRAFT CONSIDERATIONS

BACKGROUND

The Children, Families, Health, and Human Services Interim Committee requested several bill drafts in March for its studies of the children's mental health system, the adult mental health system, and the involuntary commitment of individuals with dementia to the Montana State Hospital.

This briefing paper outlines the key elements of each bill and notes policy questions for the committee's consideration.

HJR 35 STUDY: CHILDREN'S MENTAL HEALTH

After hearing numerous presentations during its study of the children's mental health system, the committee agreed to consider draft legislation focused primarily on keeping children who have significant mental health needs in Montana for treatment, rather than sending them out of state.

HJR 35-1: INCREASE PROVIDER RATES

The state pays a daily Medicaid reimbursement rate to psychiatric residential treatment facilities (PRTFs) and therapeutic group homes (TGHs), both of which provide out-of-home treatment to children who need intensive services. HJR 35-1 would create a higher rate than usual for PRTFs and TGHs that:

- during the 2025 biennium, serve more Medicaid-eligible children than they did in Fiscal Year 2022; and
- during the 2027 biennium, serve Medicaid-eligible children who meet either an acuity level or an age level set by the Department of Public Health and Human Services (DPHHS). The agency would determine the area in which it wanted to increase in-state access to the services and notify providers by March 30 before the start of each year of the biennium.

The PRTF reimbursement would be set at 133% of the base Medicaid rate when providers meet those standards. The TGH rate would increase to 160% of the base rate. The bill defines the base rate as the rate set in rule for the applicable fiscal year.

The increased payments would be contingent on approval from the Centers for Medicare and Medicaid Services (CMS) and would sunset on June 30, 2027.

POTENTIAL COSTS

The state already pays out-of-state PRTFs at 133% of the Montana Medicaid rate. Increasing the in-state rate to that same level would not increase overall costs of PRTF care if children who would otherwise be sent out of state for treatment receive services in Montana instead.

However, both in-state and out-of-state TGHs currently receive a daily rate of $201.82 for each Medicaid-eligible child. The bill draft would increase that rate to $322.91 when providers have more Medicaid beds than they did in FY 2022, resulting in an annual cost of about $44,200 for each additional bed.

HJR 35-1 does not contain an appropriation, which means the Office of Budget and Program Planning would develop a fiscal note for the bill during the session. It's possible some of the following factors would be considered:

- Licensed TGH capacity in FY 2022 is 294, while Medicaid expenditures in the first five months of the fiscal year show that about 200 beds are likely to be used for Medicaid-eligible children.
- Increasing access to 85%, 90%, or 95% of licensed capacity would result in the use of an additional 50, 65, or 79 beds, respectively.
- The reimbursement rate for the number of beds above the FY 2022 level would be increased from $201.82 to $339.88, resulting in an annual increase of about $44,199 for each additional bed.
- Provider rates will increase 2% in the second year of the biennium.
- The state will pay about 36% of the additional cost, while federal Medicaid funds will cover the remaining 64% of the cost.

The table below shows the potential annual and biennial costs of making higher TGH payments during the next biennium, using those assumptions. If fewer Medicaid beds are added, the costs would be lower.

Capacity Level	Year	General Fund	Federal Funds	Total
85% Capacity	FY 2024	$793,983	$1,411,526	**$2,205,509**
	FY 2025	$809,863	$1,439,756	**$2,249,619**
	Biennial Total	**$1,603,846**	**$2,851,282**	**$4,455,128**
90% Capacity	FY 2024	$1,027,882	$1,048,440	**$2,076322**
	FY 2025	$1,827346	$1,836,893	**$3,691,239**
	Biennial Total	**$2,855,228**	**$2,912,333**	**$5,767,561**
95% Capacity	FY 2024	$1,261,781	$1,287,016	**$2,548,798**
	FY 2025	$2,243,166	$2,288,230	**$4,531,196**
	Biennial Total	**$3,504,947**	**$3,575,046**	**$7,079,994**

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HJR 35-1, members may want to consider and decide the following questions:

1. Should the enhanced reimbursement rates be revised? If so, to what level?
2. Does the committee want to include an appropriation to cover the estimated costs? If so, in what amount?
3. Does the committee want to make other changes based on the public comments received?

HJR 35-2: STRENGTHEN QUALIFIED PROVIDER POOL STATUTE

In 2009, the Legislature passed a bill requiring DPHHS to establish a pool of qualified providers that were willing and able to serve high-risk children with multiagency service needs. The new statute — 53-2-310, MCA — also required providers to demonstrate their ability to provide the necessary services.

Under amendments made by the 2011 Legislature, DPHHS must:

- allow — but not require — an in-state provider to submit a plan of care for a high-risk youth;
- determine whether a plan of care proposed by an in-state provider is cost-effective and in the best interests of the child; and
- deny a plan of care proposed by a qualified in-state provider before sending the child out of state for services.

HJR 35-2 would make it mandatory, not optional, for a provider to submit a plan of care for a high-risk child if the provider is receiving an enhanced reimbursement rate. The bill makes exceptions for certain circumstances in which the provider is unlikely to be able to adequately serve the child because:

- the child has complex medical needs that cannot be met in Montana;
- the child is developmentally disabled with comorbidities;
- the provider's licensure doesn't allow the provider to accept the child; or
- accepting the child would pose a demonstrable risk — as defined by DPHHS in rule — to the child, to other children served by the provider, or to the provider's staff.

The draft also allows DPHHS to place a child in care without receiving a plan of care from all applicable in-state providers if delaying the placement would increase the risk to the child.

The bill would go into effect October 1, 2023.

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HJR 35-2, members may want to consider and decide the following questions:

1. Does the committee want to include additional or fewer exceptions in subsection (3) of Section 1?
2. Does the committee want to specify the time frame within which plans of care must be submitted?
3. Does the committee want to make other changes based on the public comments received?

HJR 35-3: IMPLEMENT A PROVIDER ASSESSMENT

Federal Medicaid law allows states to impose provider-specific taxes or fees on certain types of Medicaid services. Money raised by the assessment is then matched with federal Medicaid dollars. States can use the combined federal and state dollars to finance their Medicaid programs or for other purposes.

Federal law requires that any tax or fee must be the same for all providers in the class and be assessed on all providers within the specified class. In addition, the state may not promise that the providers will get back the amount of money they were assessed. The assessments can be imposed on 19 specific classes of providers.

Hospitals and nursing homes are among the specified provider groups, and Montana currently assesses a utilization fee on each of those providers. HJR 35-3 would impose a similar, bed-day utilization fee on PRTFs and TGHs.

The draft bill would require the facilities to pay a per-day fee on each occupied bed, using a reporting, collecting, and auditing framework based on the hospital and nursing home utilization fees. The fees would be paid quarterly, and 90% of the revenue would be used for increasing reimbursements for children's mental health services. The remainder would be deposited in the general fund. DPHHS would have to prioritize the higher reimbursements for services that keep children in Montana.

PRTFs and TGHs are not specifically identified in federal law as allowed provider types for health-care related assessments. However, the assessments may be imposed on providers of psychological services. Because many other providers also offer psychological services, Montana likely would need a Medicaid waiver for the limited PRTF/TGH assessment proposed in HJR 35-3.

The bill draft makes collection of the utilization fee contingent upon CMS approval of a waiver.

POTENTIAL REVENUE FROM THE FEE

The current bill draft does not specify the fee, leaving that decision to the committee. The amount of revenue raised by the utilization fee would depend not only on the level at which the fee is set, but also on the number of days in which PRTF and TGH beds are occupied during any fiscal year.

The table below estimates the potential revenue that could be raised if:

- the fee is set at either $20, $10, or $5 per bed day; and
- occupancy is at either 85%, 90%, or 95% of licensed beds.

Capacity Level		$20/Day	$10/Day	$5/Day
85% Capacity	PRTF Fee	$546,040	$273,020	$136,510
	TGH Fee	$1,824,270	$912,135	$456,058
	Federal Funds	$4,195,449	$2,097,724	$1,048,862
	Total Revenue	**$6,565,759**	**$3,282,879**	**$1,641,440**
90% Capacity	PRTF Fee	$578,160	$289,080	$144,540
	TGH Fee	$1,931,580	$965,790	$482,895
	Federal Funds	$4,442,240	$2,221,120	$1,110,560
	Total Revenue	**$6,951,980**	**$3,475,990**	$1,737,995
95% Capacity	PRTF Fee	$610,280	$305,140	$152,570
	TGH Fee	$2,038,890	$1,019,445	$509,723
	Federal Funds	$4,689,031	$2,344,515	$1,172,258
	Total Revenue	**$7,338,201**	**$3,669,100**	**$1,834,550**

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HJR 35-3, members may want to consider and decide the following questions:

1. What should the bed-day fee amount be?
2. Should the proposed distribution of the revenue raised by the fee be changed in any way?
3. Does the committee want to make any other changes based on the public comments received?

SJR 14-STUDY: ADULT MENTAL HEALTH SYSTEM

The committee heard throughout its study about the ways in which workforce shortages were contributing to the lack of mental health services in Montana. The committee agreed in March to consider draft legislation modeled on a universal licensing law passed in Arizona in 2019.

State law currently allows reciprocal licensing of people licensed in another state if the licensing standards in the other state are "substantially equivalent" to or higher than those in Montana. SJR 14-1 would create an exception to the equivalency requirement by allowing some behavioral health professionals to be licensed here if they've been licensed in another state for at least 1 year and their license is in good standing in that state.

As drafted, the bill would apply only to licensees of the Board of Behavioral Health. That board licenses:

- clinical social workers;
- clinical professional counselors;
- addiction counselors
- marriage and family therapists; and
- certified behavioral health peer support specialists.

It would not apply to candidates for licensure.

The bill would go into effect October 1, 2023.

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue SJR 14-1, members may want to consider and decide the following questions:

1. Should the bill apply to fewer or additional behavioral health providers?
2. Does the committee want to make any other changes based on the public comments received?

HJR 39 STUDY: COMMITMENT OF INDIVIDUALS WITH DEMENTIA

The committee requested two bills related to both its HJR 39 study of the involuntary commitment of people with dementia and its agency oversight duties. CMS issued an Immediate Jeopardy notice for the Montana State Hospital in February. At a special meeting in March, the committee reviewed and discussed the issues that led to that notice and asked for a bill draft to end the involuntary commitment of individuals with dementia to the State Hospital.

HJR 39-1: TRANSITION PATIENTS WITH DEMENTIA TO THE COMMUNITY

HJR 39-1 requires DPHHS to begin moving Montana State Hospital patients with a primary diagnosis of Alzheimer's disease, dementia, or traumatic brain injury into community-based services during the 2025 biennium. It also would end the involuntary commitment of individuals with a primary diagnosis of any of those conditions beginning on July 1, 2025. The bill directs the department to develop and implement a plan for ensuring community-based services are available at that time.

The bill also sets up a Transition Review Committee, staffed by the Legislative Services Division, to help assess the need for and the department's progress in developing community-based services. The 10-member committee would

consist of four legislators and six gubernatorial appointees representing stakeholders. Members would meet quarterly and report to both interim and standing committees of the Legislature.

The bill draft sets out specific tasks for the committee, including:

- hearing reports from DPHHS on the transition of State Hospital patients into the community, any barriers to the transition process, and the activities being undertaken to identify and develop community-based services;
- hearing reports from providers on matters related to serving the individuals in the community;
- reviewing efforts in other states if appropriate; and
- making recommendations to the Legislature on additional steps that may be needed.

The bill also would allow DPHHS to use up to $9 million of funds appropriated for the State Hospital to assist with transition costs and to transfer other funds as needed and in accordance with state and federal laws.

POTENTIAL COSTS

The bill contains an appropriation to cover the estimated costs of salary, travel, and secretarial support for eight meetings of the Transition Review Committee. It does not contain funding for any significant research analyst time.

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HJR 39-1, members may want to consider and decide the following questions:

1. Should additional or fewer members be appointed to the Transition Review Committee? If members are added, what entities would they represent?
2. Should the committee be staffed by the legislative branch or the executive branch?
3. Should the appropriation be revised to reflect different cost assumptions?
4. Does the committee want to make any other changes based on the public comments received?

HJR 39-2: SHARE ABUSE AND NEGLECT REPORTS

Federal law requires each state to have a protection and advocacy program for individuals with mental illness. The programs are authorized to investigate reports of abuse and neglect when the incidents are reported to the program.

HJR 39-2 would require DPHHS to share information on each allegation of abuse or neglect at the State Hospital with Montana's protection and advocacy program. DPHHS would have to provide:

- details of the allegation within 5 working days of the incident; and
- within 5 working days of completion of the investigation, the written report that details the investigation process, the conclusions of the investigation, and any corrective actions taken.

CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HJR 39-2, members may want to consider and decide the following questions:

1. When should the bill go into effect?
2. Does the committee want to make any other changes based on the public comments received?