

**Unofficial Draft Copy**

As of: 2022/04/27 08:00:49

Drafter: Sue O'Connell, 406-444-3597

67th Legislature

HJR 35-3

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\*\*\*\* BILL NO. \*\*\*\*

INTRODUCED BY \*\*\*\*

BY REQUEST OF THE \*\*\*\*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UTILIZATION FEE ON PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES AND THERAPEUTIC GROUP HOMES FOR YOUTH; ESTABLISHING REPORTING, COLLECTION, AND AUDIT PROVISIONS; PROVIDING FOR DISPOSITION OF FEES; CREATING A SPECIAL REVENUE ACCOUNT; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 12], the following definitions

apply:

(1) (a) "Bed day" means each 24-hour period that a youth eligible for treatment in a residential youth treatment facility is present in the facility or in which a bed is held for the youth while the youth is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a) regardless of the source of payment. The term also includes the day of a youth's admission to the facility even if the youth is present for less than 24 hours.

(2) "Department" means the department of revenue.

(3)(a) "Psychiatric residential treatment facility" means a facility as defined in 42 CFR 483.352.

(b) The term does not include a psychiatric residential treatment facility that is located in a hospital facility when the psychiatric residential treatment facility beds and hospital beds are owned and operated by the same entity and served by a common administrative and support staff.

(4) "Report" means the report of bed days required under [section 3].

(5) "Residential youth treatment facility" means a psychiatric residential treatment facility or therapeutic group home.

1 (6) "Therapeutic group home" means a treatment facility providing therapeutic services that is licensed  
2 by and under contract with the department of public health and human services as a facility with the supervision  
3 and intensity of treatment required to manage and treat up to eight children who present severe emotional  
4 disturbance or behavioral disorders as determined by the department of public health and human services.

5 (7) "Utilization fee" or "fee" means the fee required to be paid for each day in a psychiatric residential  
6 treatment facility or therapeutic group home.

7

8 **NEW SECTION. Section 2. Utilization fee for bed days in residential youth treatment facility --**

9 **relation to other fees and taxes.** (1) A residential youth treatment facility in the state shall pay to the  
10 department a utilization fee for each bed day in the facility. The fee is:

11 (a) AN AMOUNT TO BE DETERMINED for a psychiatric residential treatment bed day; and

12 (b) AN AMOUNT TO BE DETERMINED for a therapeutic group home bed day.

13 (3) Proceeds from collection of the fees must be deposited as follows:

14 (a) 90% of the revenue must, in accordance with the provisions of 17-2-124, be deposited to the credit  
15 of the department of public health and human services in the special revenue account provided for in [section  
16 11]; and

17 (b) 10% must be deposited in the general fund.

18 (4) A residential youth treatment facility may not place a fee created in this section on a patient's bill.

19 (5) The utilization fee imposed under this section is in addition to any other taxes and fees required by  
20 law to be paid by residential youth treatment facilities.

21

22 **NEW SECTION. Section 3. Reporting and collection of fees -- penalty and interest for**

23 **delinquent fee -- disposition of revenue.** (1) A residential youth treatment facility shall report to the  
24 department at the end of calendar quarter the number of bed days in the facility during the quarter. The report  
25 must be in the form prescribed by the department and is due on or before the 15th day of the month following  
26 the close of each quarter.

27 (2) The report must be accompanied by payment in an amount equal to the fee required to be paid  
28 under [section 2].

**Unofficial Draft Copy**

As of: 2022/04/27 08:00:49

Drafter: Sue O'Connell, 406-444-3597

67th Legislature

HJR 35-3

1 (3) At the end of each calendar quarter, the department of public health and human services shall  
2 provide the department with a list of residential youth treatment facilities.

3 (4) If a facility does not pay the required fee on or before the due date of the report as provided in  
4 [section 5], penalty and interest, as provided in 15-1-216, must be added to the fee.

5 (5) All proceeds from collection of the utilization fees and any penalties and interest on the fees must  
6 be deposited in the special revenue account provided for in [section 1].

7

8 **NEW SECTION. Section 4. Audit -- records.** (1) The department may audit the records of any youth  
9 residential treatment facility to ensure the proper utilization fee has been collected.

10 (2) The department may require the facility to provide records and other documentation, including  
11 books, ledgers and registers, necessary for the department to verify the proper amount of the utilization fee  
12 paid.

13 (3) A facility shall maintain and make available for inspection by the department sufficient records and  
14 other documentation to demonstrate the number of bed days in the facility subject to the utilization fee. The  
15 facility shall maintain the records for at least 5 years from the date the report is due.

16

17 **NEW SECTION. Section 5. Periods of limitation.** (1) Except as otherwise provided in this section,  
18 a deficiency may not be assessed or collected with respect to the period for which a report is filed unless the  
19 notice of additional fees proposed to be assessed is mailed within 5 years from the date the report was filed.  
20 For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the  
21 last day. If, before the expiration of the period prescribed for assessment of the fee, the facility consents in  
22 writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of  
23 the period agreed upon.

24 (2) A refund or credit may not be paid or allowed with respect to the year for which the report is filed  
25 after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment,  
26 whichever period expires later, unless before the expiration of the period, the facility files a claim or the  
27 department has determined the existence of the overpayment and has approved the refund or credit. If the  
28 facility has agreed in writing under the provisions of subsection (1) to extend the time within which the

1 department may propose an additional assessment, the period within which a claim for refund or credit is filed  
2 or a credit or refund allowed in the event no claim is filed is automatically extended.

3

4 **NEW SECTION. Section 6. Estimated fee on failure to file.** For the purposes of ascertaining the  
5 correctness of any report or for the purpose of making an estimate of bed day use of any facility where  
6 information has been obtained, the department may:

7 (1) examine or cause to have examined by any designated agent or representative any books, papers,  
8 records, or memoranda bearing upon the matters required to be included in the report;

9 (2) require the attendance of any officer or employee of the facility making the report or the attendance  
10 of any other persons in the premises having relevant knowledge; and

11 (3) take testimony and require production of any other material for its information.

12

13 **NEW SECTION. Section 7. Deficiency assessment -- penalty and interest -- hearing.** (1)(a) If the  
14 department determines that the amount of fees due is greater than the amount disclosed by the report, it shall  
15 mail the facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the  
16 notice, the facility may file with the department a written protest against the proposed additional fees stating the  
17 grounds upon which the protest is based. The facility may request in its protest an oral hearing or an  
18 opportunity to present additional evidence relating to its fees liability.

19 (b) If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final  
20 upon the expiration of the 30-day period.

21 (c) If a protest is filed, the department shall reconsider the proposed assessment and, if the facility has  
22 requested, shall grant the facility an oral hearing. After consideration of the protest and the evidence presented  
23 at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the  
24 facility.

25 (2) When a deficiency is determined and the fees become final, the department shall mail notice and  
26 demand to the facility for payment. Penalty and interest may be added to any deficiency assessment as  
27 provided in 15-1-216.

28

**Unofficial Draft Copy**

As of: 2022/04/27 08:00:49

Drafter: Sue O'Connell, 406-444-3597

67th Legislature

HJR 35-3

1           **NEW SECTION. Section 8. Closing agreements.** (1) The director of the department or any person  
2 authorized in writing by the director is authorized to enter into an agreement with any facility relating to the  
3 liability of the facility in respect to fees imposed by [sections 1 through 12].

4           (2) An agreement under this section is final and conclusive, and except upon a showing of fraud,  
5 malfeasance, or misrepresentation of a material fact:

6           (a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer,  
7 employee, or agent of this state; and

8           (b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection,  
9 payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be  
10 annulled, modified, set aside, or disregarded.

11

12           **NEW SECTION. Section 9. Credit for overpayment -- interest.** (1) If the department determines  
13 that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the  
14 overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance  
15 must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its  
16 shareholders upon dissolution.

17           (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is  
18 charged on unpaid taxes, as provided in 15-1-216. Interest is due from the due date of the report or from the  
19 date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the  
20 overpayment. Interest does not accrue during any period during which the processing of a claim for refund is  
21 delayed more than 30 days by reason of failure of the facility to furnish information requested by the department  
22 for the purpose of verifying the amount of the overpayment.

23           (3) Interest is not allowed:

24           (a) if the overpayment is refunded within 6 months from the date the report is due or from the date the  
25 return is filed, whichever is later; or

26           (b) if the amount of interest is less than \$1.

27           (4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably  
28 assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is

1 allowable.

2

3 **NEW SECTION. Section 10. Warrant for distraint.** If the utilization fee is not paid when due, the  
4 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

5

6 **NEW SECTION. Section 11. Residential youth treatment facility special revenue account.** (1)

7 There is a youth residential treatment facility utilization fee account in the state special revenue fund as  
8 provided in 17-2-102.

9 (2) The account consists of:

10 (a) money received from the collection of the residential youth treatment facility utilization fee pursuant  
11 to [section 2(3)(a)]; and

12 (b) penalties paid pursuant to [sections 1 through 12]; and

13 (c) interest accrued on any penalties and on the account provided for in this section.

14 (3) Money in the account must be used by the department of public health and human services for  
15 children's mental health services. The department shall give priority to funding treatment services that allow  
16 children with significant mental health needs to receive care in state rather than out of state.

17 (4) Money remaining in the account at the end of a fiscal year **MAY or MAY NOT BE** expended or  
18 transferred for any other purpose.

19

20 **NEW SECTION. Section 12. Rulemaking authority.** The department may adopt rules necessary to  
21 implement and administer [sections 1 through 12].

22

23 **NEW SECTION. Section 13. Direction to department of public health and human services.** The  
24 legislature directs the department of public health and human services to apply for any medicaid waiver  
25 necessary to implement the provisions of [sections 1 through 12].

26

27 **NEW SECTION. Section 14. Contingent effective date.** [This act] is effective on the date that the  
28 department of public health and human services certifies to the code commissioner that the centers for

**Unofficial Draft Copy**

As of: 2022/04/27 08:00:49

Drafter: Sue O'Connell, 406-444-3597

HJR 35-3

67th Legislature

1 medicare and medicaid services has approved the waiver necessary to implement the provisions of [this act].

2 The director shall submit certification within 15 days of the occurrence of the contingency.

3 - END -

DRAFT