

SENATE BILL NO. 191

INTRODUCED BY M. CUFFE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CREATION AND LICENSURE OF RESIDENTIAL TREATMENT CENTERS; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; EXTENDING FUNDING OF APPROPRIATE EDUCATIONAL OPPORTUNITIES TO CHILDREN IN RESIDENTIAL TREATMENT CENTERS; AND AMENDING SECTIONS 20-7-419, 20-7-436, AND 50-5-101, MCA."

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

NEW SECTION. **Section 1. Licensing of residential treatment centers -- rulemaking.** (1) The department shall license residential treatment centers, as defined in 50-5-101.

(2) The department shall adopt administrative rules for licensure, including:

- (a) an appropriate staff-to-patient ratio;
- (b) minimum qualifications for staff;
- (c) staff training requirements;
- (d) required treatment services and if the services must be provided on-site or if they may be provided through arrangements with other health care facilities;
- (e) insurance requirements;
- (f) fingerprint background checks for anyone with regular access to patients, including staff, volunteers, and mental health contractors;
- (g) guidelines for written policies and procedures, including those for suicide prevention;
- (h) abuse and neglect reporting requirements;
- (i) provisional licensure as provided in subsection (4); and
- (j) other rules the department considers necessary to ensure the safe operation of residential

treatment centers.

(3) Residential treatment centers must have accreditation granted by an accrediting entity

1 approved by the U.S. centers for medicare and medicaid services.

2 (4) (a) The department may grant an initial 6-month provisional license to a facility that submits
3 written evidence of its application for accreditation as required by subsection (3) and is in the process of
4 obtaining full accreditation.

5 (b) The department may grant an additional 6-month provisional license to a facility that submits
6 written evidence of its application for accreditation as required by subsection (3) and is in the process of
7 accreditation.

8 (c) Provisional licensure may not exceed 1 year.

9

10 **Section 2.** Section 20-7-419, MCA, is amended to read:

11 **"20-7-419. Rules.** The superintendent of public instruction shall adopt rules for the implementation of
12 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

13 (1) the calculation of tuition under 20-7-420;

14 (2) the calculation and distribution of funds under 20-7-435; and

15 (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment
16 facilities, residential treatment centers, therapeutic group homes, and public schools pursuant to 20-7-435."

17

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

19 **"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

20 (1) "Appropriate educational opportunity" means:

21 (a) for an eligible child without a disability:

22 (i) if provided by a nonpublic school, an education program provided in accordance with the
23 requirements for a nonpublic school under the provisions of 20-5-109; and

24 (ii) if provided by a public school, an education program consistent with accreditation standards
25 provided for in 20-7-111; and

26 (b) for an eligible child with a disability, a free appropriate public education consistent with state
27 standards for the provision of special education and related services.

28 (2) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

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

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

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

7 (3) "Eligible child" means a Montana resident child or youth who is less than 19 years of age on
8 September 10 of the school year and who has a serious emotional disturbance that is so severe that the child
9 or youth has been placed in a qualifying facility for treatment.

10 (4) "Qualifying facility" means a children's psychiatric hospital, a residential treatment facility, a
11 residential treatment center as defined in 50-5-101, or a therapeutic group home located in Montana.

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

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

14 (ii) operates for the primary purpose of providing residential psychiatric care to individuals under
15 21 years of age;

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

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

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

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

24 (6) "Therapeutic group home" means an in-state treatment facility providing therapeutic services
25 licensed and under contract with the department of public health and human services as a youth care facility, as
26 defined in 52-2-602."
27

28 **Section 4.** Section 50-5-101, MCA, is amended to read:

- 1 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly
2 indicates otherwise, the following definitions apply:
- 3 (1) "Accreditation" means a designation of approval.
- 4 (2) "Activities of daily living" means tasks usually performed in the course of a normal day in a
5 resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.
- 6 (3) "Adult day-care center" means a facility, freestanding or connected to another health care
7 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily
8 living but that does not provide overnight care.
- 9 (4) (a) "Adult foster care home" means a private home or other facility that offers, except as
10 provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons
11 who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under
12 the full guardianship of the owner or manager.
- 13 (b) As used in this subsection (4), the following definitions apply:
- 14 (i) "Aged person" means a person as defined by department rule as aged.
- 15 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or
16 disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific
17 person is available to meet those basic needs.
- 18 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
19 department rule as disabled.
- 20 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing
21 such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
22 administration.
- 23 (B) The term does not include the administration of prescriptive medications.
- 24 (5) "Affected person" means an applicant for a certificate of need, a long-term care facility located
25 in the geographic area affected by the application, an agency that establishes rates for long-term care facilities,
26 or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.
- 27 (6) "Assisted living facility" means a congregate residential setting that provides or coordinates
28 personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-

1 related services.

2 (7) "Capital expenditure" means:

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

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

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

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

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

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

20 (12) "Congregate" means the provision of group services designed especially for elderly or disabled
21 persons who require supportive services and housing.

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

24 (a) an existing health care facility; or

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

26 (14) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
27 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-
28 5-233.

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

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

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

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

7 (19) "Governmental unit" means the state, a state agency, a county, municipality, or political
8 subdivision of the state, or an agency of a political subdivision.

9 (20) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
10 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
11 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
12 individual. The term includes abortion clinics as defined in 50-20-901, chemical dependency facilities, critical
13 access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home
14 infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities
15 for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for
16 primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities,
17 residential treatment facilities, residential treatment centers, and rural emergency hospitals.

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

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

24 (22) "Home infusion therapy agency" means a health care facility that provides home infusion
25 therapy services.

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

1 member.

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

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

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

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

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

19 (ii) specialty hospitals.

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

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

25 (26) "Infirmarium" means a facility located in a university, college, government institution, or industry
26 for the treatment of the sick or injured, with the following subdefinitions:

27 (a) an "infirmarium--A" provides outpatient and inpatient care;

28 (b) an "infirmarium--B" provides outpatient care only.

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

3 (b) The term does not include community homes for persons with developmental disabilities that
4 are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
5 52-4-203.

6 (28) "Intermediate developmental disability care" means the provision of intermediate nursing care
7 services, health-related services, and social services for persons with a developmental disability, as defined in
8 53-20-102, or for persons with related problems.

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

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

15 (31) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing
16 care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two
17 or more individuals or that provides personal care.

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

23 (32) "Medical assistance facility" means a facility that meets both of the following:

24 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
25 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a
26 longer period is required because transfer to a hospital is precluded because of inclement weather or
27 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
28 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse

1 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
2 of the individual.

3 (b) either is located in a county with fewer than six residents a square mile or is located more than
4 35 road miles from the nearest hospital.

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

8 (34) "Nonprofit health care facility" means a health care facility owned or operated by one or more
9 nonprofit corporations or associations.

10 (35) "Offer" means the representation by a health care facility that it can provide specific health
11 services.

12 (36) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
13 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational
14 functions of a youth and that:

15 (i) serves either adjudicated or nonadjudicated youth;

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

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

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

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

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

26 (39) "Patient" means an individual obtaining services, including skilled nursing care, from a health
27 care facility.

28 (40) "Person" means an individual, firm, partnership, association, organization, agency, institution,

1 corporation, trust, estate, or governmental unit, whether organized for profit or not.

2 (41) "Personal care" means the provision of services and care for residents who need some
3 assistance in performing the activities of daily living.

4 (42) "Practitioner" means an individual licensed by the department of labor and industry who has
5 assessment, admission, and prescription authority.

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

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

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

13 (46) "Residential care facility" means an adult day-care center, an adult foster care home, an
14 assisted living facility, or a retirement home.

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

20 (48) "Residential treatment center" means a facility that offers primary mental health services,
21 assessment, counseling, skilled nursing services, medication management, co-occurring substance use
22 disorder treatment, and behavioral health treatment in a residential setting 24 hours a day to youth under 19
23 years of age whose mental health needs are not met in other settings.

24 (48)(49) "Residential treatment facility" means a facility operated for the primary purpose of providing
25 residential psychiatric care to individuals under 21 years of age.

26 (49)(50) "Retirement home" means a building or buildings in which separate living accommodations are
27 rented or leased to individuals who use those accommodations as their primary residence.

28 (50)(51) "Rural emergency hospital" means a facility defined in 42 U.S.C. 1395x(kkk)(2) that is

1 designated by the department as a rural emergency hospital in accordance with 50-5-234.

2 ~~(54)~~(52)"Skilled nursing care" means the provision of nursing care services, health-related services,
3 and social services under the supervision of a licensed registered nurse on a 24-hour basis.

4 ~~(52)~~(53)(a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the
5 diagnosis, care, or treatment of one or more of the following categories:

- 6 (i) patients with a cardiac condition;
- 7 (ii) patients with an orthopedic condition;
- 8 (iii) patients undergoing a surgical procedure; or
- 9 (iv) patients treated for cancer-related diseases and receiving oncology services.

10 (b) For purposes of this subsection ~~(52)~~ (53), a specialty hospital may provide other services for
11 medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise
12 provided by law if the care encompasses 35% or less of the hospital services.

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

- 14 (i) psychiatric hospitals;
- 15 (ii) rehabilitation hospitals;
- 16 (iii) children's hospitals;
- 17 (iv) long-term care hospitals; or
- 18 (v) critical access hospitals.

19 ~~(53)~~(54)"State long-term care facilities plan" means the plan prepared by the department to project the
20 need for long-term care facilities within Montana and approved by the governor and a statewide health
21 coordinating council appointed by the director of the department.

22 ~~(54)~~(55)"Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
23 acute care or extended skilled nursing care to a patient."
24

25 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 1].

27 - END -