

SENATE BILL NO. 499
INTRODUCED BY B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE PUBLIC MENTAL HEALTH SYSTEM; PROVIDING FOR CRISIS RESPONSE SERVICES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN CONJUNCTION WITH COUNTIES; AMENDING SERVICE AREA AUTHORITY DEFINITIONS AND DUTIES; AND AMENDING SECTIONS 53-21-102, 53-21-138, 53-21-139, 53-21-1001, 53-21-1002, 53-21-1006, 53-21-1007, AND 53-21-1010, MCA."

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

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Crisis response" means short-term intensive mental health services initiated during a mental health crisis to help the recipient cope with immediate stressors, identify and use available resources, and begin to

return to the recipient's baseline level of functioning.

(7) "Crisis screening and assessment" means an assessment by a trained person under the clinical supervision or direction of a mental health professional following a screening that suggests that the individual may be experiencing a mental health crisis or an emergency situation.

~~(6)~~(8) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(7)~~(9) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(8)~~(10) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(9)~~(11) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(12) "Mental health crisis" means an adult's or a child's behavioral, emotional, or psychiatric situation that, but for the provision of crisis response services, would likely result in significantly reduced levels of functioning in primary activities of daily living, in an emergency situation, or in the placement of the recipient in a more restrictive setting, including but not limited to inpatient hospitalization.

~~(10)~~(13) (a) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment

to children or adults with a mental disorder.

(b) A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(11)~~(14) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(12)~~(15) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(13)~~(16) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(14)~~(17) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(15)~~(18) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(16)~~(19) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(17)~~(20) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(18)~~(21) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(19)~~(22) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center.

(1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis ~~intervention~~ response program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest qualified mental health care provider as arranged by the county; or

(c) subject to 53-21-193 and subsection (3) of this section, transfer the inmate to a private mental health facility, a behavioral health inpatient facility, or a hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) The facility must be notified, and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before a person may be transferred under this section.

(4) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, disorderly conduct, and disturbing the public peace.

(5) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

Section 3. Section 53-21-139, MCA, is amended to read:

"53-21-139. Crisis ~~intervention programs~~ response system. (1) The department shall, ~~subject to available appropriations, in conjunction with county commissioners in their role provided for in 53-21-1010,~~ establish crisis ~~intervention~~ response programs. The programs must be designed to provide 24-hour ~~emergency admission and care of persons suffering from a mental disorder and requiring commitment~~ crisis screening and assessment, crisis response, and stabilization services in a temporary, safe environment in the community as an alternative to placement in jail or emergency detention at the state hospital.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis ~~intervention~~ response services and for the provision of alternatives to jail placement or emergency detention. Each county must have a prepared mental health crisis response system plan that describes how any person requiring mental health crisis services in the county may gain access to a continuum of mental health services, including:

(a) initial mental health crisis screening and assessment;

(b) crisis response services;

(c) crisis stabilization; and

(d) a secure facility or hospitalization.

(3) The department ~~may~~ shall provide crisis ~~intervention~~ response programs as:

~~—(a) a rehabilitative service under 53-6-101(3)(j); and~~

~~—(b) a targeted case management service authorized in 53-6-101(3)(n).~~

(4) A service area authority is responsible for the review and monitoring of county plans developed as provided in this section."

Section 4. Section 53-21-1001, MCA, is amended to read:

"53-21-1001. (Temporary) Definitions. As used in this part, the following definitions apply:

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

(2) "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to contract with the department for the planning, oversight, and administration of mental health services within a service area as defined by the department by rule. (Terminates June 30, 2005--sec. 20, Ch. 602, L. 2003.)

53-21-1001. (Effective July 1, 2005) Definitions. As used in this part, the following definitions apply:

~~(1) "Community mental health center" means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.~~

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

~~(3)(2) "Licensed mental health center" means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.~~

~~(4)~~(3) "Service area" means a region of the state as defined by the department by rule within which mental health services are administered.

~~(5)~~(4) "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to ~~contract with~~ provide the department for the with planning, oversight, and ~~administration of~~ advice regarding mental health services within a service area."

Section 5. Section 53-21-1002, MCA, is amended to read:

"53-21-1002. Duties of department. The department:

- (1) shall take cognizance of matters affecting the mental health of the citizens of the state;
- (2) shall initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The department shall initiate and operate services in cooperation with local agencies, ~~service area authorities~~, mental health professionals, and other entities providing services to persons with mental illness.
- (3) shall specifically address:
 - (a) provider contracting;
 - (b) service planning;
 - (c) preadmission screening and discharge planning;
 - (d) quality management;
 - (e) utilization management and review;
 - (f) consumer and family education; and
 - (g) rights protection;
- (4) shall collect and disseminate information relating to mental health;
- (5) shall prepare and maintain a comprehensive plan to develop public mental health services in the state and to establish service areas;
- (6) must receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;
- (7) shall establish qualified provider certification standards by rule, which may include requirements for national accreditation for mental health programs that receive funds from the department;
- (8) shall perform an annual review and evaluation of mental health needs and services within the state by region and evaluate the performance of programs that receive funds from the department for compliance with

federal and state standards;

(9) shall coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances, as provided in Title 52, chapter 2, part 3, and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(10) shall coordinate the establishment of service area authorities, as provided in 53-21-1006, to assist the department in with planning, oversight, and advice regarding the coordination and delivery of mental health services."

Section 6. Section 53-21-1006, MCA, is amended to read:

"53-21-1006. Service area authorities -- leadership committees -- boards -- plans. (1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for persons with mental illness, advocates, family members of persons with mental illness, mental health professionals, county commissioners, and other interested community members.

(2) The leadership committee within each service area must include but is not limited to a significant portion of consumers of services for persons with mental illness, family members of persons with mental illness, and a mental health services provider. The department shall provide assistance for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's functions and method of appointment. The bylaws must be submitted to the department for review.

(4) The service area authority board ~~must~~ may be established under Title 35, chapter 2. ~~Upon incorporation, the board may enter into contracts with the department to carry out the comprehensive plan for mental health for that service area.~~ Nonprofit corporations incorporated for the purposes of this part may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

- (a) ~~shall define the operation and management of the service area mental health system, including:~~
- ~~—— (i) provider contracting;~~
 - ~~—— (ii) quality and outcome management;~~

- ~~_____ (iii) service planning;~~
- ~~_____ (iv) utilization management and review;~~
- ~~_____ (v) preadmission screening and discharge planning;~~
- ~~_____ (vi) consumer advocacy and family education and rights protection;~~
- ~~_____ (vii) infrastructure;~~
- ~~_____ (viii) information system requirements; and~~
- ~~_____ (ix) procurement processes; assist in planning and oversight and provide advice to the department in carrying out its duties provided in 53-21-1002;~~

(b) shall review county crisis response program plans provided for in 53-21-139;

~~(b)(c)~~ shall submit a biennial review and evaluation of mental health service needs and services within the service area;

~~(c)(d)~~ shall keep all records of the board and make reports required by the department;

~~(d) shall prepare and submit a plan and budget proposal to support mental health services for children and adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area;~~

(e) may receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of this part.

(f) shall reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board; and

(g) shall either include a county commissioner or work closely with county commissioners in the service area.

~~(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4-year transition plan, subject to approval of the federal waivers as provided for in section 15, Chapter 602, Laws of 2003.~~

~~(7)(6)~~ A service area authority may not directly provide mental health services."

Section 7. Section 53-21-1007, MCA, is amended to read:

"53-21-1007. Mental health services contracts. (1) The department shall provide for public mental health services for the purposes of the prevention, diagnosis, and treatment of mental illness to the extent funded by the legislature.

(2) The department may administer the provision of services for prevention, diagnosis, and treatment of mental illness directly or indirectly:

~~——(a) through contract with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers; or~~

~~——(b) through contract with service area authorities who may contract with or develop cooperative arrangements with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers for the provision of services.~~

(3) The department is directed to encourage and create incentives for the use of funding generated by local governments to provide mental health services to participate in federal cost-sharing programs.

(4) The department shall ~~make efforts to~~ promote the rights of persons with mental illness who are eligible for services to have a choice among qualified providers of mental health services or support services that are administered or funded by the department ~~or contracted with a service area authority by the department.~~

(5) The department ~~or a service area authority~~ shall develop contracts to be bid competitively under the Montana Procurement Act for any service administered or funded by the department that will limit a client's choice of a provider of that service in order to ensure accountability and that necessary services are delivered in all areas of the state. ~~Except for the department's ability to contract solely with service area authorities, the~~ The exception for human services as provided in 18-4-123(18) does not apply."

Section 8. Section 53-21-1010, MCA, is amended to read:

"53-21-1010. (Effective July 1, 2005) County commissioners --community mental health centers -- licensed mental health centers. (1) The county commissioners in each of the counties in the region or service area that are designated as participating counties pursuant to subsection (4) may appoint, upon request, a person from their respective county to serve as a representative of the county on a ~~community mental health center board~~ ~~or other~~ licensed mental health center board.

(2) A ~~community mental health center board~~ ~~or other~~ licensed mental health center board may establish a recommended proportionate level of financial participation for each of the counties within the region for the provision of mental health services within the limits of financial participation authorized by this section.

(3) Prior to June 10 of each year, the board of a ~~community mental health center or other~~ licensed mental health center may submit an annual budget to the board of county commissioners of each of the counties within their mental health region or service area, specifying each county's recommended proportionate share.

(4) If a board of county commissioners includes in the county budget the county's proportionate share of the ~~community mental health center or other~~ licensed mental health center board's budget, the county must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. Subject to 15-10-420, if the general fund is insufficient to meet the approved budget, a levy may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(5) Each board of county commissioners, after determining the amount of county general fund money to be used for mental health services, may contract with a ~~community mental health center or another~~ licensed mental health center or provider for mental health services in the county."

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