



AN ACT REVISING DEVELOPMENTAL DISABILITY LAWS TO UPDATE TERMINOLOGY; REPLACING THE TERM "MENTAL RETARDATION" WITH THE TERM "INTELLECTUAL DISABILITY"; AMENDING SECTIONS 15-67-101, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004, 39-30-103, 50-8-101, 53-6-401, 53-6-402, 53-20-102, 53-20-127, 53-20-128, 53-20-141, 53-20-142, 53-20-146, 53-20-148, 53-20-161, 53-20-164, 53-20-202, AND 53-21-102, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS.

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

**Section 1.** Section 15-67-101, MCA, is amended to read:

**"15-67-101. (Temporary) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the developmentally disabled licensed pursuant to 50-5-238 or an intermediate care facility for the ~~mentally retarded~~ intellectually disabled that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation.

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) "Report" means the report of resident bed days required in 15-67-201.

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section

242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in 15-67-102. (Void on occurrence of contingency--sec. 17, Ch. 531, L. 2003--see chapter compiler's comment.)"

**Section 2.** Section 33-22-304, MCA, is amended to read:

**"33-22-304. Continuation of coverage for individuals with disabilities -- individual contracts.** (1)

An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the policyholder or subscriber for support and maintenance. Proof of ~~retardation or the disability~~ intellectual disability or physical disability and dependency must be furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 3.** Section 33-22-506, MCA, is amended to read:

**"33-22-506. Continuation of coverage for persons with disabilities -- group contracts.** (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy or contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by

reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of ~~retardation or the disability~~ intellectual disability or physical disability and dependency must be furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 4.** Section 33-30-1003, MCA, is amended to read:

**"33-30-1003. Continuation of coverage for persons with disabilities -- individual contracts.** (1) An individual hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the subscriber for support and maintenance. Proof of ~~retardation or the disability~~ intellectual disability or physical disability and dependency must be furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 5.** Section 33-30-1004, MCA, is amended to read:

**"33-30-1004. Continuation of coverage for persons with disabilities -- group contracts.** (1) A group hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage of a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the contract must also provide in substance that attainment of the

limiting age may not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the employee or member for support and maintenance. Proof of ~~the retardation or disability~~ intellectual disability or physical disability and dependency must be furnished to the hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof may not be required more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts."

**Section 6.** Section 39-30-103, MCA, is amended to read:

**"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

- (i) a department, as defined in 2-15-102, for a position within the executive branch;
- (ii) a legislative agency for a position within the legislative branch;
- (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
- (iv) a city or town for a municipal position, including a city or municipal court position; and
- (v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ intellectual disability and

requiring treatment similar to that required by ~~mentally-retarded~~ intellectually disabled individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

**Section 7.** Section 50-8-101, MCA, is amended to read:

**"50-8-101. Definitions.** As used in this part, the following definitions apply:

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

(2) "Facility" means:

(a) nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;

(b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;

(c) youth care facilities;

(d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

(e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the ~~mentally retarded~~ intellectually disabled;

(f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(g) assisted living facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

**Section 8.** Section 53-6-401, MCA, is amended to read:

**"53-6-401. Definitions.** As used in this part, the following definitions apply:

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

(2) "Home and community-based services" means, as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c), and any regulations implementing that statute, long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings and funded by the department with medicaid money.

(3) "Level-of-care determination" means an assessment of a person and the resulting determination establishing whether long-term care facility services to be provided to the person are appropriate to meet the health care and related circumstances and needs of the person.

(4) "Long-term care facility" means a facility that is certified by the department, as provided in 53-6-106, to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities or, for the purposes of implementation of medicaid-funded programs of home and community-based services, that is recognized by the U.S. department of health and human services to be an institutional setting from which persons may be diverted through the receipt of home and community-based services.

(5) "Long-term care preadmission screening" means, in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r, a process conducted according to a specific set of criteria for determining whether a person with ~~mental retardation~~ intellectual disability or mental illness may be admitted to a long-term care facility.

(6) "Persons with disabilities or persons who are elderly" means, for purposes of establishing home and community-based services, those categories of persons who are elderly and disabled as defined in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."

**Section 9.** Section 53-6-402, MCA, is amended to read:

**"53-6-402. Medicaid-funded home and community-based services -- waivers -- funding limitations -- populations -- services -- providers -- long-term care preadmission screening -- powers and duties of department -- rulemaking authority.** (1) The department may obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities

or persons who are elderly.

(2) The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system ~~must~~ shall strive to incorporate the following components:

- (a) flexibility in design of the system to attempt to meet individual needs;
- (b) local involvement in development and administration;
- (c) encouragement of culturally sensitive and appropriately trained mental health providers;
- (d) accountability of recipients and providers; and
- (e) development of a system consistent with the state policy as provided in 52-2-301.

(3) The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.

(4) The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.

(5) The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.

(6) The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial



participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.

(7) The department may consider the following populations or subsets of populations for home and community-based services programs:

(a) persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;

(b) persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary

to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(8) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(9) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

- (a) case management services;
- (b) homemaker services;
- (c) home health aide services;
- (d) personal care services;
- (e) adult day health services;
- (f) habilitation services;
- (g) respite care services; and
- (h) other cost-effective services appropriate for maintaining the health and well-being of persons and

to avoid institutionalization of persons.

(10) Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(11) (a) The department may conduct long-term care preadmission screenings in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

(b) Long-term care preadmission screenings are required for all persons seeking admission to a long-term care facility.

(c) A person determined through a long-term care preadmission screening to have ~~mental retardation~~ an intellectual disability or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.

(d) The long-term care preadmission screenings must include a determination of whether the person needs specialized ~~mental retardation~~ intellectual disability or mental health treatment while residing in the facility.

(12) The department may adopt rules necessary to implement the long-term care preadmission screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.

(13) The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:

- (a) the populations or subsets of populations, as provided in subsection (7), to be served in each program;
- (b) limits on enrollment;
- (c) limits on per capita expenditures;
- (d) requirements and limitations for service costs and expenditures;
- (e) eligibility categories criteria, requirements, and related measures;

- (f) designation and description of the types and features of the particular services provided for under subsection (9);
- (g) provider requirements and reimbursement;
- (h) financial participation requirements for enrollees as provided in subsection (6);
- (i) utilization measures;
- (j) measures to ensure the appropriateness and quality of services to be delivered; and
- (k) other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services."

**Section 10.** Section 53-20-102, MCA, is amended to read:

**"53-20-102. Definitions.** As used in this part, the following definitions apply:

- (1) (a) "Available" means:
  - (i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;
  - (ii) that funding for the services has been identified and committed for the person's immediate use; and
  - (iii) that all providers have offered the necessary services for the person's immediate use.
- (b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.
- (2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.
- (3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.
- (4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.
- (5) "Community-based facilities" or "community-based services" means those facilities and services that

are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(6) "Court" means a district court of the state of Montana.

(7) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

- (a) has training and experience in psychometric testing and evaluation;
- (b) has experience in the field of developmental disabilities; and
- (c) is certified, as provided in 53-20-106, by the department of public health and human services.

(8) "Developmental disability" means a disability that:

(a) is attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ intellectual disability;

- (b) requires treatment similar to that required by ~~mentally retarded~~ intellectually disabled individuals;
- (c) originated before the individual attained age 18;
- (d) has continued or can be expected to continue indefinitely; and
- (e) results in the person having a substantial disability.

(9) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

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

(12) "Qualified ~~mental retardation~~ intellectual disability professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(13) "Resident" means a person committed to a residential facility.

(14) "Residential facility" or "facility" means the Montana developmental center.

(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133,

that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility or imposition of a community treatment plan is appropriate.

(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

(17) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(18) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) cannot be safely and effectively habilitated through voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others."

**Section 11.** Section 53-20-127, MCA, is amended to read:

**"53-20-127. Transfer to another facility -- release to community-based alternative -- hearing. (1)**

If, at any time during the period for which a resident is committed to a residential facility for an extended period of habilitation and treatment, the qualified ~~mental-retardation~~ intellectual disability professional responsible for the resident's habilitation decides that the resident no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, the qualified ~~mental-retardation~~ intellectual disability professional may release the resident to the community-based alternative.

(2) Notice of the proposed release must be sent at least 15 days prior to the date of release to:

(a) the resident;

(b) the resident's parents or guardian;

(c) the attorney who most recently represented the resident, if any;

(d) the responsible person appointed by the court, if any;

(e) the resident's advocate, if any; and

(f) the court that ordered the commitment.

(3) If a party that was notified objects to the release, the party may petition the court for a hearing to

determine whether the release should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release.

(4) A resident may be transferred without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical treatment or to a mental health facility for emergency treatment provided that the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(5) If a person is committed to a residential facility for an extended course of habilitation without a hearing and if subsequent to commitment one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified ~~mental retardation~~ intellectual disability professional responsible for the resident's habilitation to release the resident to the alternative if it is a community-based alternative. A release must comply with the requirements of subsections (1) through (4). If the qualified ~~mental retardation~~ intellectual disability professional in charge of the resident refuses to authorize the release, the party may petition the court for a hearing to determine whether the resident's commitment should be continued. The hearing must comply with the procedures set forth in 53-20-125."

**Section 12.** Section 53-20-128, MCA, is amended to read:

**"53-20-128. Recombitment -- extension of community treatment plan.** (1) The qualified ~~mental retardation~~ intellectual disability professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney file a petition for recommitment or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified ~~mental retardation~~ intellectual disability professional or case manager and a summary of the current habilitation plan or community treatment plan for the respondent.

(4) The petition must be reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified ~~mental-retardation~~ intellectual disability professional or case manager must be sent to:

- (a) the court that issued the current order;
- (b) the residential facility screening team;
- (c) the resident;
- (d) the resident's parents or guardian or next of kin, if any;
- (e) the attorney who most recently represented the resident, if any;
- (f) the responsible person appointed by the court, if any; and
- (g) the resident's advocate, if any.

(6) The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.

(7) If either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d)."

**Section 13.** Section 53-20-141, MCA, is amended to read:

**"53-20-141. Denial of legal rights.** (1) Unless specifically stated in an order by the court, a person committed to a residential facility or for whom a community treatment plan has been imposed for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for the person for a period of more than 30 days, the court ordering the commitment or imposing the community treatment plan may make an order stating specifically any legal rights that are denied and any legal disabilities that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator



of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the commitment or expiration of the order imposing the community treatment plan if not previously terminated by the court. A conservatorship or guardianship extending beyond the period of the commitment or order imposing a community treatment plan may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a residential facility or for whom a community treatment plan has been imposed pursuant to this part is, upon the termination of the commitment or expiration of the order imposing the community treatment plan, automatically restored to all of the person's civil and legal rights that may have been lost when the person was committed or the community treatment plan was imposed. However, this subsection does not affect any guardianship or conservatorship created independently of the proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified ~~mental retardation~~ intellectual disability professional or case manager in charge of the person's care shall give the person a written statement setting forth the substance of this subsection."

**Section 14.** Section 53-20-142, MCA, is amended to read:

**"53-20-142. Rights while in residential facility.** Persons admitted to a residential facility for a period of habilitation ~~shall enjoy~~ have the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents must have the same rights and access to private telephone communication as patients at any public hospital except to the extent that the individual treatment planning team or the qualified ~~mental retardation~~ intellectual disability professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents have an unrestricted right to visitation except to the extent that the individual treatment planning team or the qualified ~~mental retardation~~ intellectual disability professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons

for the restrictions. The written order must be renewed monthly if restrictions are to be continued.

(5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of ~~retardation~~ intellectual disability, or accompanying disabilities.

(6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents must have the opportunity to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the resident's throughout the resident's stay in the facility. Clothing, both in amount and type, must make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident has the right to keep and use the resident's own personal possessions except insofar as the clothes or personal possessions may be determined by the individual treatment planning team or the qualified ~~mental retardation~~ intellectual disability professional to be dangerous either to the resident or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. The facility must be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities ~~shall~~ must meet all fire and safety standards established by the state and locality. In addition, the facility ~~shall~~ must meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment

must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires worship. Provisions for religious worship must be made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, the resident's parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and equipment for exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except when the individual treatment planning team or the qualified ~~mental retardation~~ intellectual disability professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued."

**Section 15.** Section 53-20-146, MCA, is amended to read:

**"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified ~~mental retardation~~ intellectual disability professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified ~~mental retardation~~ intellectual disability professional who has had proper training.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of electric shock devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility."

**Section 16.** Section 53-20-148, MCA, is amended to read:

**"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of ~~retardation~~ intellectual disability, or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the resident's fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

- (a) more to less structured living;
- (b) larger to smaller facilities;
- (c) larger to smaller living units;
- (d) group to individual residences;
- (e) segregated from the community to integrated into the community living;
- (f) dependent to independent living.

(3) Within 30 days of admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

- (a) a statement of the nature of the specific limitations and the needs of the resident;
- (b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;
- (c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;
- (d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals

of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified ~~mental retardation~~ intellectual disability professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified ~~mental retardation~~ intellectual disability professional is also responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified ~~mental retardation~~ intellectual disability professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and the resident's habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) The superintendent of the residential facility, or the superintendent's designee, shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by

the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility."

**Section 17.** Section 53-20-161, MCA, is amended to read:

**"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

- (a) the court;
- (b) the resident or former resident if the resident or former resident is over the age of majority and is capable of giving informed consent;
- (c) the parents or guardian in charge of a resident under the age of 12;
- (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;
- (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;
- (f) the superintendent of the residential facility or the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;
- (g) the superintendent of the residential facility or the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or
- (h) the superintendent of the residential facility or the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules.

(2) Information may not be released by a superintendent or the superintendent's designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident's advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

- (a) identification data, including the resident's legal status;
- (b) the resident's history, including but not limited to:
  - (i) family data, educational background, and employment record;
  - (ii) prior medical history, both physical and mental, including prior institutionalization;
- (c) the resident's grievances, if any;
- (d) an inventory of the resident's life skills, including mode of communication;
- (e) a record of each physical examination that describes the results of the examination;
- (f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate summary to guide and assist the resident care workers in implementing the resident's habilitation plan;
- (g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes and failures of the habilitation program and whatever modifications are necessary;
- (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications to the postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;
  - (i) a medication history and status;
  - (j) a summary of each significant contact by a qualified ~~mental-retardation~~ intellectual disability



professional with a resident;

(k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified ~~mental retardation~~ intellectual disability professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified ~~mental retardation~~ intellectual disability professional or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and immunizations."

**Section 18.** Section 53-20-164, MCA, is amended to read:

**"53-20-164. Resident labor.** The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in the labor described in this subsection if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the feeding, clothing, bathing, training, or supervision of other residents unless the resident:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for the activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided that the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified ~~mental retardation~~ intellectual disability professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee if the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified ~~mental retardation~~ intellectual disability professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as the resident's ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall

formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

**Section 19.** Section 53-20-202, MCA, is amended to read:

**"53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day-care services;
- (e) training services;
- (f) education services;
- (g) employment services;
- (h) recreation services;
- (i) personal-care services;
- (j) domiciliary-care services;
- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental retardation~~ intellectual disability and requiring treatment similar to that required by ~~mentally retarded~~ intellectually disabled individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons

with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis."

**Section 20.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this chapter, 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 facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

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

(7) "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) "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.

(9) (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~~ intellectual disability; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

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

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

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

(16) "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;

(c) a licensed psychologist; or

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

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

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

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

**Section 21. Nonapplicability.** [This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53.

**Section 22. Contingent voidness.** [Section 1] terminates on occurrence of the contingency contained in section 17, Chapter 531, Laws of 2003.

- END -

I hereby certify that the within bill,  
HB 0123, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

HOUSE BILL NO. 123

INTRODUCED BY K. REGIER

AN ACT REVISING DEVELOPMENTAL DISABILITY LAWS TO UPDATE TERMINOLOGY; REPLACING THE TERM "MENTAL RETARDATION" WITH THE TERM "INTELLECTUAL DISABILITY"; AMENDING SECTIONS 15-67-101, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004, 39-30-103, 50-8-101, 53-6-401, 53-6-402, 53-20-102, 53-20-127, 53-20-128, 53-20-141, 53-20-142, 53-20-146, 53-20-148, 53-20-161, 53-20-164, 53-20-202, AND 53-21-102, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS.