

HOUSE BILL NO. 123

INTRODUCED BY K. REGIER

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A BILL FOR AN ACT ENTITLED: "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

1 services, regardless of the source of payment.

2 (8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an
3 intermediate care facility, as provided in 15-67-102. (Void on occurrence of contingency--sec. 17, Ch. 531, L.
4 2003--see chapter compiler's comment.)"

5

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

7 **"33-22-304. Continuation of coverage for individuals with disabilities -- individual contracts.** (1)

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

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

21

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

23 **"33-22-506. Continuation of coverage for persons with disabilities -- group contracts.** (1) A group

24 hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for
25 delivery in this state that provides that coverage of a dependent child of an employee or other member of the
26 covered group terminates upon attainment of the limiting age for dependent children specified in the policy or
27 contract must also provide in substance that attainment of the limiting age may not operate to terminate the
28 coverage of the child while the child is and continues to be both incapable of self-sustaining employment by
29 reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the employee
30 or member for support and maintenance. Proof of ~~retardation or the disability~~ intellectual disability or physical

1 disability and dependency must be furnished to the insurer or hospital or medical service plan corporation by the
 2 employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be
 3 required by the insurer or corporation. Proof may not be required more frequently than annually after the 2-year
 4 period following the child's attainment of the limiting age.

5 (2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal
 6 application to hospital or medical expense insurance policies and hospital and medical service plan contracts."
 7

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

9 **"33-30-1003. Continuation of coverage for persons with disabilities -- individual contracts.** (1) An
 10 individual hospital or medical service plan contract delivered or issued for delivery in this state that provides that
 11 coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified
 12 in the contract must also provide in substance that attainment of the limiting age may not operate to terminate
 13 the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by
 14 reason of ~~mental retardation~~ intellectual disability or physical disability and chiefly dependent upon the subscriber
 15 for support and maintenance. Proof of ~~retardation or the disability~~ intellectual disability or physical disability and
 16 dependency must be furnished to the hospital or medical service plan corporation by the subscriber within 31
 17 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. Proof
 18 may not be required more frequently than annually after the 2-year period following the child's attainment of the
 19 limiting age.

20 (2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal
 21 application to hospital or medical expense insurance policies and hospital and medical service plan contracts."
 22

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

24 **"33-30-1004. Continuation of coverage for persons with disabilities -- group contracts.** (1) A group
 25 hospital or medical service plan contract delivered or issued for delivery in this state that provides that coverage
 26 of a dependent child of an employee or other member of the covered group terminates upon attainment of the
 27 limiting age for dependent children specified in the contract must also provide in substance that attainment of the
 28 limiting age may not operate to terminate the coverage of the child while the child is and continues to be both
 29 incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical disability
 30 and chiefly dependent upon the employee or member for support and maintenance. Proof of ~~the retardation or~~

1 ~~disability~~ intellectual disability or physical disability and dependency must be furnished to the hospital or medical
 2 service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age
 3 and subsequently as may be required by the corporation. Proof may not be required more frequently than
 4 annually after the 2-year period following the child's attainment of the limiting age.

5 (2) Notwithstanding any other exemption or contrary law, the provisions of this section have equal
 6 application to hospital or medical expense insurance policies and hospital and medical service plan contracts."
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8 **Section 6.** Section 39-30-103, MCA, is amended to read:

9 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

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

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

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

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

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

25 (i) a disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism,
 26 or any other neurologically disabling condition closely related to ~~mental retardation~~ intellectual disability and
 27 requiring treatment similar to that required by ~~mentally-retarded~~ intellectually disabled individuals; or

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

30 (b) The term mental impairment does not include alcoholism or drug addiction and does not include any

1 mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a
2 defense to any criminal charge.

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

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

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

12 (b) a state or local elected official;

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

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

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

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

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

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

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

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

25 (ii) any county, city, or town.

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

29 (7) "Substantially equal qualifications" means the qualifications of two or more persons among whom
30 the public employer cannot make a reasonable determination that the qualifications held by one person are

1 significantly better suited for the position than the qualifications held by the other persons."

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

4 **"50-8-101. Definitions.** As used in this part, the following definitions apply:

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

6 (2) "Facility" means:

7 (a) nonmedical facilities including:

8 (i) mental health transitional living facilities; and

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

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

13 (c) youth care facilities;

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

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

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

19 (g) assisted living facilities.

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

22 (4) "Licensing agency" means the agency that is authorized by statute to issue the license."
23

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

25 **"53-6-401. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

14 (6) "Persons with disabilities or persons who are elderly" means, for purposes of establishing home and
 15 community-based services, those categories of persons who are elderly and disabled as defined in accordance
 16 with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n."
 17

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

19 **"53-6-402. Medicaid-funded home and community-based services -- waivers -- funding limitations**
 20 **-- populations -- services -- providers -- long-term care preadmission screening -- powers and duties of**
 21 **department -- rulemaking authority.** (1) The department may obtain waivers of federal medicaid law in
 22 accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs
 23 of home and community-based services funded with medicaid money for categories of persons with disabilities
 24 or persons who are elderly.

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

- 29 (a) flexibility in design of the system to attempt to meet individual needs;
 30 (b) local involvement in development and administration;

- 1 (c) encouragement of culturally sensitive and appropriately trained mental health providers;
- 2 (d) accountability of recipients and providers; and
- 3 (e) development of a system consistent with the state policy as provided in 52-2-301.
- 4 (3) The department may, subject to the terms and conditions of a federal waiver of law, administer
- 5 programs of home and community-based services to serve persons with disabilities or persons who are elderly
- 6 who meet the level of care requirements for one of the categories of long-term care services that may be funded
- 7 with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness,
- 8 developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations
- 9 by the U.S. department of health and human services. Programs may serve combinations of populations and
- 10 subsets of populations that are appropriate subjects for a particular program of services.
- 11 (4) The provision of services to a specific population through a home and community-based services
- 12 program must be less costly in total medicaid funding than serving that population through the categories of
- 13 long-term care facility services that the specific population would be eligible to receive otherwise.
- 14 (5) The department may initiate and operate a home and community-based services program to more
- 15 efficiently apply available state general fund money, other available state and local public and private money, and
- 16 federal money to the development and maintenance of medicaid-funded programs of health care and related
- 17 services and to structure those programs for more efficient and effective delivery to specific populations.
- 18 (6) The department, in establishing programs of home and community-based services, shall administer
- 19 the expenditures for each program within the available state spending authority that may be applied to that
- 20 program. In establishing covered services for a home and community-based services program, the department
- 21 shall establish those services in a manner to ensure that the resulting expenditures remain within the available
- 22 funding for that program. To the extent permitted under federal law, the department may adopt financial
- 23 participation requirements for enrollees in a home and community-based services program to foster appropriate
- 24 utilization of services among enrollees and to maintain fiscal accountability of the program. The department may
- 25 adopt financial participation requirements that may include but are not limited to copayments, payment of monthly
- 26 or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may
- 27 vary among the various home and community-based services programs. The department, as necessary, may
- 28 further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and
- 29 reduce the types and amounts of services available through a home and community-based services program
- 30 when the department determines that expenditures for a program are reasonably expected to exceed the

1 available spending authority.

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

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

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

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

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

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

20 (f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or
21 frequent basis, of specialized health services and personal assistance and other supportive services necessary
22 to meet their needs of daily living and to maintain the persons in personal or other community-integrated
23 residential situations;

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

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

30 (i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health

1 services, personal assistance, and other supportive services necessary to meet their needs of daily living and
2 to maintain the persons in personal or other community-integrated residential situations; or

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

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

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

13 (a) case management services;

14 (b) homemaker services;

15 (c) home health aide services;

16 (d) personal care services;

17 (e) adult day health services;

18 (f) habilitation services;

19 (g) respite care services; and

20 (h) other cost-effective services appropriate for maintaining the health and well-being of persons and
21 to avoid institutionalization of persons.

22 (10) Subject to the approval of the U.S. department of health and human services, the department may
23 establish appropriate programs of home and community-based services under this section in conjunction with
24 programs that have limited pools of providers or with managed care arrangements, as implemented through
25 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in
26 conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration
27 project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

28 (11) (a) The department may conduct long-term care preadmission screenings in accordance with section
29 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

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

1 long-term care facility.

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

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

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

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

14 (a) the populations or subsets of populations, as provided in subsection (7), to be served in each
15 program;

16 (b) limits on enrollment;

17 (c) limits on per capita expenditures;

18 (d) requirements and limitations for service costs and expenditures;

19 (e) eligibility categories criteria, requirements, and related measures;

20 (f) designation and description of the types and features of the particular services provided for under
21 subsection (9);

22 (g) provider requirements and reimbursement;

23 (h) financial participation requirements for enrollees as provided in subsection (6);

24 (i) utilization measures;

25 (j) measures to ensure the appropriateness and quality of services to be delivered; and

26 (k) other appropriate provisions necessary to the administration of the program and the delivery of
27 services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S.
28 department of health and human services."

29

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

1 **"53-20-102. Definitions.** As used in this part, the following definitions apply:

2 (1) (a) "Available" means:

3 (i) that services of an identified provider or providers have been found to be necessary and appropriate
4 for the habilitation of a specific person by the person's individual treatment planning team;

5 (ii) that funding for the services has been identified and committed for the person's immediate use; and

6 (iii) that all providers have offered the necessary services for the person's immediate use.

7 (b) A service is not available simply because similar services are offered by one or more providers in one
8 or more locations to other individuals or because the person has been placed on a waiting list for services or
9 funding.

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

12 (3) "Case manager" means a person who is responsible for service coordination, planning, and crisis
13 intervention for persons who are eligible for community-based developmental disability services from the
14 department.

15 (4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the
16 habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously
17 developmentally disabled.

18 (5) "Community-based facilities" or "community-based services" means those facilities and services that
19 are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a
20 community setting.

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

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

24 (a) has training and experience in psychometric testing and evaluation;

25 (b) has experience in the field of developmental disabilities; and

26 (c) is certified, as provided in 53-20-106, by the department of public health and human services.

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

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

30 (b) requires treatment similar to that required by ~~mentally retarded~~ intellectually disabled individuals;

- 1 (c) originated before the individual attained age 18;
- 2 (d) has continued or can be expected to continue indefinitely; and
- 3 (e) results in the person having a substantial disability.
- 4 (9) "Habilitation" means the process by which a person who has a developmental disability is assisted
- 5 in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs
- 6 and the demands of the environment and in raising the level of the person's physical, mental, and social
- 7 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.
- 8 (10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and
- 9 responsible for the habilitation of a resident. The resident is a member of the team.
- 10 (11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and
- 11 sisters of a person.
- 12 (12) "~~Qualified mental retardation~~ intellectual disability professional" means a professional program staff
- 13 person for the residential facility who the department of public health and human services determines meets the
- 14 professional requirements necessary for federal certification of the facility.
- 15 (13) "Resident" means a person committed to a residential facility.
- 16 (14) "Residential facility" or "facility" means the Montana developmental center.
- 17 (15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133,
- 18 that is responsible for screening a respondent to determine if the commitment of the respondent to a residential
- 19 facility or imposition of a community treatment plan is appropriate.
- 20 (16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
- 21 developmentally disabled and for whom the petition requests commitment to a residential facility or imposition
- 22 of a community treatment plan.
- 23 (17) "Responsible person" means a person willing and able to assume responsibility for a person who
- 24 is seriously developmentally disabled or alleged to be seriously developmentally disabled.
- 25 (18) "Seriously developmentally disabled" means a person who:
- 26 (a) has a developmental disability;
- 27 (b) is impaired in cognitive functioning; and
- 28 (c) cannot be safely and effectively habilitated through voluntary use of community-based services
- 29 because of behaviors that pose an imminent risk of serious harm to self or others."
- 30

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

2 **"53-20-127. Transfer to another facility -- release to community-based alternative -- hearing.** (1)

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

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

- 10 (a) the resident;
- 11 (b) the resident's parents or guardian;
- 12 (c) the attorney who most recently represented the resident, if any;
- 13 (d) the responsible person appointed by the court, if any;
- 14 (e) the resident's advocate, if any; and
- 15 (f) the court that ordered the commitment.

16 (3) If a party that was notified objects to the release, the party may petition the court for a hearing to
17 determine whether the release should be allowed. The hearing must comply with the procedures set forth in
18 53-20-125. The court may on its own initiative inquire concerning the propriety of the release.

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

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

1 the resident's commitment should be continued. The hearing must comply with the procedures set forth in
2 53-20-125."

3

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

5 **"53-20-128. Recombitment -- extension of community treatment plan.** (1) The qualified ~~mental~~
6 ~~retardation~~ intellectual disability professional responsible for a resident's habilitation or the case manager
7 responsible for habilitation of a person under a community treatment plan may request that the county attorney
8 file a petition for recommitment or extension of the order imposing the community treatment plan.

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

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

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

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

18 (a) the court that issued the current order;

19 (b) the residential facility screening team;

20 (c) the resident;

21 (d) the resident's parents or guardian or next of kin, if any;

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

23 (f) the responsible person appointed by the court, if any; and

24 (g) the resident's advocate, if any.

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

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

30 (8) The court may not order recommitment to a residential facility that does not have an individualized

1 habilitation plan for the resident.

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

5

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

7 **"53-20-141. Denial of legal rights.** (1) Unless specifically stated in an order by the court, a person
8 committed to a residential facility or for whom a community treatment plan has been imposed for an extended
9 course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this
10 part, except to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

11 (2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for
12 the person for a period of more than 30 days, the court ordering the commitment or imposing the community
13 treatment plan may make an order stating specifically any legal rights that are denied and any legal disabilities
14 that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator
15 of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion
16 of the commitment or expiration of the order imposing the community treatment plan if not previously terminated
17 by the court. A conservatorship or guardianship extending beyond the period of the commitment or order
18 imposing a community treatment plan may not be created except according to the procedures set forth under
19 Montana law for the appointment of conservators and guardians generally.

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

29

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

1 **"53-20-142. Rights while in residential facility.** Persons admitted to a residential facility for a period
2 of habilitation ~~shall enjoy~~ have the following rights:

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

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

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

11 (4) Residents have an unrestricted right to visitation except to the extent that the individual treatment
12 planning team or the qualified ~~mental-retardation~~ intellectual disability professional responsible for formulation
13 of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons
14 for the restrictions. The written order must be renewed monthly if restrictions are to be continued.

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

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

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

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

30 (a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in

1 a safe, clean, and attractive condition must be developed and implemented;

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

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

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

11 (9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental
12 ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment
13 must meet standards of medical practice in the community. However, nothing in this subsection may be
14 interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of
15 psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

16 (10) Corporal punishment is not permitted.

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

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

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

29 (14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction
30 with members of the opposite sex except when the individual treatment planning team or the qualified ~~mental~~

1 ~~retardation~~ intellectual disability professional responsible for the formulation of a particular resident's habilitation
2 plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly
3 if the restriction is to be continued."
4

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

6 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential
7 facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and
8 informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian
9 or the responsible person appointed by the court after opportunities for consultation with independent specialists
10 and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities
11 board of visitors before consent is sought.

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

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

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

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

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

10

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

12 **"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation,
13 including medical treatment, education, and care suited to their needs, regardless of age, degree of ~~retardation~~
14 intellectual disability, or disabling condition. Each resident has a right to a habilitation program that will maximize
15 the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential
16 facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the
17 resident's fullest potential. The facility shall implement the principle of normalization so that each resident may
18 live as normally as possible.

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

21 (a) more to less structured living;

22 (b) larger to smaller facilities;

23 (c) larger to smaller living units;

24 (d) group to individual residences;

25 (e) segregated from the community to integrated into the community living;

26 (f) dependent to independent living.

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

29 (4) Each resident must have an individualized habilitation plan formulated by an individual treatment
30 planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's

1 admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted
2 pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation
3 plan must contain:

4 (a) a statement of the nature of the specific limitations and the needs of the resident;

5 (b) a description of intermediate and long-range habilitation goals, with a projected timetable for their
6 attainment;

7 (c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and
8 long-range goals;

9 (d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals
10 of the resident;

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

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

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

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

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

1 habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A
2 habilitation plan must be reviewed monthly.

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

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

8 (10) Each resident, the parents or guardian of each resident, and the responsible person appointed by
9 the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the
10 above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning
11 the care and habilitation of the resident that may be available to assist them in understanding the situation of the
12 resident and the rights of the resident in the facility."

13

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

15 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and
16 must be readily available to persons who are directly involved with the particular resident and to the mental
17 disabilities board of visitors. All information contained in a resident's records must be considered privileged and
18 confidential. The parents or guardian, the responsible person appointed by the court, and any person properly
19 authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's
20 parents or guardian or the responsible person must be permitted access to the resident's records. Information
21 may not be released from the records of a resident or former resident of the residential facility unless the release
22 of the information has been properly authorized in writing by:

23 (a) the court;

24 (b) the resident or former resident if the resident or former resident is over the age of majority and is
25 capable of giving informed consent;

26 (c) the parents or guardian in charge of a resident under the age of 12;

27 (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and
28 the resident if the resident is capable of giving informed consent;

29 (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

30 (f) the superintendent of the residential facility or the superintendent's designee as custodian of a

1 resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has
2 been appointed;

3 (g) the superintendent of the residential facility or the superintendent's designee as custodian of a
4 resident under the age of majority for whom there is no parent or legal guardian; or

5 (h) the superintendent of the residential facility or the superintendent's designee as custodian of a
6 resident of that facility whenever release is required by federal or state law or department of public health and
7 human services rules.

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

20 (3) These records must include:

21 (a) identification data, including the resident's legal status;

22 (b) the resident's history, including but not limited to:

23 (i) family data, educational background, and employment record;

24 (ii) prior medical history, both physical and mental, including prior institutionalization;

25 (c) the resident's grievances, if any;

26 (d) an inventory of the resident's life skills, including mode of communication;

27 (e) a record of each physical examination that describes the results of the examination;

28 (f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate
29 summary to guide and assist the resident care workers in implementing the resident's habilitation plan;

30 (g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes

- 1 and failures of the habilitation program and whatever modifications are necessary;
- 2 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the
3 community and any modifications to the postinstitutionalization plan and a summary of the steps that have been
4 taken to implement that plan;
- 5 (i) a medication history and status;
- 6 (j) a summary of each significant contact by a qualified ~~mental-retardation~~ intellectual disability
7 professional with a resident;
- 8 (k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified
9 ~~mental-retardation~~ intellectual disability professional involved in the resident's habilitation and recorded at least
10 monthly. Wherever possible, the response must be scientifically documented.
- 11 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of the
12 activity upon the resident's progress in the habilitation plan;
- 13 (m) a signed order by a qualified ~~mental-retardation~~ intellectual disability professional or physician for
14 any physical restraints;
- 15 (n) a description of any extraordinary incident or accident in the facility involving the resident, to be
16 entered by a staff member noting personal knowledge of the incident or accident or other source of information,
17 including any reports of investigations of the resident's mistreatment;
- 18 (o) a summary of family visits and contacts;
- 19 (p) a summary of attendance and leaves from the facility;
- 20 (q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and
21 immunizations."

22

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

24 **"53-20-164. Resident labor.** The following rules govern resident labor:

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

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

1 residents unless the resident:

2 (a) has volunteered;

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

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

5 (d) is adequately supervised; and

6 (e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938,
7 29 U.S.C. 206, as amended.

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

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

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

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

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

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

21 (c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938,
22 29 U.S.C. 206, as amended.

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

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

30 (7) Deductions or payments for care and other charges may not deprive a resident of a reasonable

1 amount of the compensation received pursuant to this section for personal and incidental purchases and
2 expenses.

3 (8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers
4 for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall
5 formulate a written policy to protect the residents from exploitation when they are engaged in productive work."
6

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

8 **"53-20-202. Definitions.** As used in this part, the following definitions apply:

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

- 11 (a) evaluation services;
- 12 (b) diagnostic services;
- 13 (c) treatment services;
- 14 (d) day-care services;
- 15 (e) training services;
- 16 (f) education services;
- 17 (g) employment services;
- 18 (h) recreation services;
- 19 (i) personal-care services;
- 20 (j) domiciliary-care services;
- 21 (k) special living arrangements services;
- 22 (l) counseling services;
- 23 (m) information and referral services;
- 24 (n) follow-along services;
- 25 (o) protective and other social and sociolegal services; and
- 26 (p) transportation services.

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

28 (3) "Developmental disabilities" means disabilities attributable to ~~mental retardation~~ intellectual disability,
29 cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to ~~mental~~
30 ~~retardation~~ intellectual disability and requiring treatment similar to that required by ~~mentally retarded~~ intellectually

1 disabled individuals if the disability originated before the person attained age 18, has continued or can be
2 expected to continue indefinitely, and results in the person having a substantial disability.

3 (4) "Developmental disabilities facility" means any service or group of services offering care to persons
4 with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis."
5

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

7 **"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

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

12 (2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less
13 licensed by the department that is capable of providing secure, inpatient psychiatric services, including services
14 to persons with mental illness and co-occurring chemical dependency.

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

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

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

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

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

24 (8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental
25 disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring
26 commitment in dealing with legal proceedings, including consultation with legal counsel and others.

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

29 (b) The term does not include:

30 (i) addiction to drugs or alcohol;

- 1 (ii) drug or alcohol intoxication;
- 2 (iii) ~~mental retardation~~ intellectual disability; or
- 3 (iv) epilepsy.
- 4 (c) A mental disorder may co-occur with addiction or chemical dependency.
- 5 (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care
- 6 center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility,
- 7 or a residential treatment center licensed or certified by the department that provides treatment to children or
- 8 adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the
- 9 meaning of this part.
- 10 (11) "Mental health professional" means:
- 11 (a) a certified professional person;
- 12 (b) a physician licensed under Title 37, chapter 3;
- 13 (c) a professional counselor licensed under Title 37, chapter 23;
- 14 (d) a psychologist licensed under Title 37, chapter 17;
- 15 (e) a social worker licensed under Title 37, chapter 22; or
- 16 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
- 17 psychiatric mental health nursing.
- 18 (12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person
- 19 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory
- 20 responsibilities to protect patients from abuse and neglect.
- 21 (b) The term includes but is not limited to:
- 22 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- 23 (ii) failure to follow a prescribed plan of care and treatment; or
- 24 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.
- 25 (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and
- 26 sisters of a person.
- 27 (14) "Patient" means a person committed by the court for treatment for any period of time or who is
- 28 voluntarily admitted for treatment for any period of time.
- 29 (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.
- 30 (16) "Professional person" means:

1 (a) a medical doctor;

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

4 (c) a licensed psychologist; or

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

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

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

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

11

12 NEW SECTION. **Section 21. Contingent voidness.** [Section 1] terminates on occurrence of the
13 contingency contained in section 17, Chapter 531, Laws of 2003.

14

- END -