

1 House BILL NO. 658
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 PAYMENTS FOR CARE OF RESIDENTS OF INSTITUTIONS, DISTRICT
 7 YOUTH GUIDANCE HOMES, AND CUSTODIAL AGENCIES; AMENDING
 8 SECTIONS 10-1238, 10-1249, 38-210, AND 80-1601 THROUGH
 9 80-1606, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE
 10 DATE."
 11

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

13 Section 1. Section 80-1601, R.C.M. 1947, is amended to
 14 read as follows:

15 "80-1601. Institutions subject to per diem and
 16 ancillary charge charges. The department of institutions
 17 shall collect and process per diem and ancillary payments
 18 for the care of residents in the following institutions and
 19 for the care of those persons in foster homes or group homes
 20 under provisions of the department:

- 21 ~~(1) Montana children's center~~
- 22 (2) (1) Warm Springs state hospital;
- 23 (3) (2) Boulder river school and hospital;
- 24 (4) (3) Galen state hospital;
- 25 (5) (4) Montana veterans' home;

INTRODUCED BILL

1 ~~(6) (5)~~ Montana center for the aged; and
 2 ~~(7) (6)~~ Eastmont training center."

3 Section 2. Section 80-1602, R.C.M. 1947, is amended to
 4 read as follows:

5 "80-1602. Definition of terms. As used in this
 6 chapter, unless the context requires otherwise the following
 7 definitions apply:

8 (1) "Ancillary charge" means identifiable, direct,
 9 ~~patient resident~~ service expenses including, but not limited
 10 to, operating room, anesthesia, x-ray, laboratory, blood
 11 bank, oxygen therapy, physical therapy, medical supply,
 12 drug, and specialized medical equipment, expenses.

13 (2) "Full-time equivalent resident load" means the
 14 total daily resident count for the fiscal year divided by
 15 the number of days in the year.

16 (3) "Per diem" means the gross daily cost of operating
 17 an institution, excluding the cost of educational programs
 18 and ancillary charges, divided by the full-time equivalent
 19 resident load. ~~The per diem may be computed separately for~~
 20 ~~distinctively different programs at multipurpose~~
 21 ~~institutions. However, a schedule of differing per diem~~
 22 charges may be computed, including a schedule of charges for
 23 residents treated on an outpatient basis, for each program
 24 established or funded by the legislature and assigned to an
 25 institution listed in 80-1601.

HB 658

1 (4) "Resident" means any person who is receiving care
2 from, or who is a resident of, an institution listed in
3 section 80-1601.

4 (5) "~~Responsible~~ financially responsible person" means
5 ~~a person responsible for the support and maintenance of a~~
6 ~~resident spouse of a resident, the natural or adoptive~~
7 ~~parents of a resident under 18 years of age, or a guardian~~
8 ~~or conservator to the extent of the guardian's or~~
9 ~~conservator's responsibility for the financial affairs of~~
10 ~~the person who is a resident under applicable Montana law~~
11 ~~establishing the duties and limitations of guardianships or~~
12 ~~conservatorships.~~

13 (6) "Long-term resident" means a resident in an
14 institution listed in 80-1601 for a continuous period in
15 excess of 120 days. No absence of a resident from the
16 institution due to a temporary or trial visit may be counted
17 as interrupting the accrual of the 120 days required to
18 attain the status of a long-term resident.

19 (7) "Care" means the care, treatment, support,
20 maintenance, and other services rendered by the department
21 to a resident.

22 (8) "Department" means the department of institutions
23 provided for in Title 82A, chapter 8."

24 Section 3. Section 80-1603, R.C.M. 1947, is amended to
25 read as follows:

1 "80-1603. Monthly assessment of charges -- annual
2 computation of rate -- investigation -- ~~claim-of-estate~~
3 ~~ability to pay~~ -- review -- ~~deposit-of--receipts~~ liability.

4 (1) The department shall assess monthly against each
5 resident or financially responsible person, the full per
6 diem charge, a proportionate share of the per diem charge,
7 or no per diem charge, plus full ancillary charge, a
8 proportionate share of the ancillary charge, or no ancillary
9 charge, based upon financial information given to the
10 department during its investigation conducted according to
11 the rules of the department. The per diem shall be computed
12 on July 1 of each year by the department.

13 (2) An assessment made by the department under this
14 section shall be based on the resident's or financially
15 responsible person's ability to pay. The department shall
16 prescribe rules which establish criteria and a procedure for
17 determining ability to pay. The department shall may not
18 make an assessment which would place an undue financial
19 burden on the resident or the financially responsible
20 person.

21 (3) ~~(a) For the purpose of these investigations, every~~
22 Each agency of the state ~~is required to render~~ shall give
23 all reasonable assistance to the department in obtaining all
24 information necessary for the proper ~~implementation of the~~
25 ~~purpose of this financial~~ investigation of residents or

1 financially responsible persons. A representative of the
 2 department, duly authorized by the director, may administer
 3 oaths, take testimony, subpoena and compel the attendance of
 4 witnesses and the production of books, papers, records, and
 5 documents in connection with the duty of securing payments
 6 for support as provided by this act. A person who fails to
 7 obey the subpoena, upon petition of the department, to any
 8 judge of the district court of the state, may be ordered by
 9 the judge to appear and show cause for his disobedience of
 10 the subpoena. The judge, after the hearing, may order that
 11 the subpoena be obeyed, or if it is made to appear to the
 12 judge that the subpoena was for any reason inappropriately
 13 issued, may dismiss the petition. A person who fails to obey
 14 the subpoena when ordered to do so by the judge may be
 15 punished for contempt of court on application of the
 16 district court by the department.

17 (b) Upon request of the department, the resident or
 18 financially responsible person shall make available to the
 19 department any financial information which the department
 20 considers essential for the purpose of determining ability
 21 to pay and which, under federal law, the department is not
 22 prohibited from seeking or obtaining from the resident or
 23 financially responsible person. Willful failure to provide
 24 the financial information requested by the department may
 25 result in a determination of ability to pay up to the full

1 per diem and full ancillary charges until such time as the
 2 requested information is provided and the department makes a
 3 new determination of ability to pay.

4 (c) (i) A representative of the department authorized
 5 by the director may administer oaths, take testimony, and
 6 subpoena and compel the attendance of witnesses and the
 7 production of books, papers, records, and documents in
 8 connection with the duty of securing payments for care as
 9 provided by this chapter.

10 (ii) A person who fails to obey the subpoena, upon
 11 petition of the department to any judge of a district court
 12 of the state, may be ordered by the judge to appear and show
 13 cause for his disobedience of the subpoena. The judge, after
 14 a hearing, may order that the subpoena be obeyed or, if it
 15 appears that the subpoena was inappropriately issued, may
 16 dismiss the petition. A person who fails to obey the
 17 subpoena when so ordered by the judge may be punished for
 18 contempt of court on application of the department to the
 19 district court.

20 (4) The state has a claim against the estate of a
 21 patient and against the estate of a responsible person, for
 22 an amount due to the state at the date of death of the
 23 resident or the responsible person. The claim against the
 24 estate of a responsible person does not have priority
 25 against the estate for the amount necessary to rear and

1 ~~educate surviving children of the responsible person. If a~~
 2 ~~resident or financially responsible person disagrees with~~
 3 ~~the determination of the department as to his ability to pay~~
 4 ~~any part of the per diem or ancillary charge, an appeal may~~
 5 ~~be filed within 30 days of the date of the department's~~
 6 ~~determination with the board of institutions, according to~~
 7 ~~the procedure established by rules of the department. If the~~
 8 ~~resident or financially responsible person disagrees with~~
 9 ~~the determination of the appeal by the board of~~
 10 ~~institutions, an appeal may be filed in any court of record~~
 11 ~~in Montana having jurisdiction of the resident or~~
 12 ~~financially responsible person liable for payment.~~

13 ~~(5) The attorney general shall collect any claim which~~
 14 ~~the state may have against such estate. This claim may not~~
 15 ~~be enforced against any real estate while it is occupied as~~
 16 ~~a home by the surviving spouse or the resident or~~
 17 ~~responsible person. At appropriate intervals, the department~~
 18 ~~shall review each determination of ability to pay and, if~~
 19 ~~there has been a significant change in a resident's or~~
 20 ~~financially responsible person's ability to pay, shall make~~
 21 ~~a new determination. However, a new determination of ability~~
 22 ~~to pay may not be applied retroactively unless the new~~
 23 ~~determination results in a monthly assessment which is less~~
 24 ~~than the previous monthly assessment or unless the resident~~
 25 ~~or financially responsible person has materially~~

1 ~~misrepresented any financial information. The department~~
 2 ~~shall make rules to implement the provisions of this~~
 3 ~~subsection, including but not limited to rules for credit or~~
 4 ~~refund of any overpayment resulting from an assessment~~
 5 ~~retroactively reduced because of a new determination of~~
 6 ~~ability to pay.~~

7 ~~(6) If a resident or responsible person disagrees with~~
 8 ~~the determination of the department as to the ability of the~~
 9 ~~resident or responsible person to pay any part of the per~~
 10 ~~diem or ancillary charge, an appeal may be filed within~~
 11 ~~thirty (30) days of the determination with the board of~~
 12 ~~institutions. If the resident disagrees with the~~
 13 ~~determination of the appeal by the board of institutions, an~~
 14 ~~appeal may be filed in any court of record in Montana having~~
 15 ~~jurisdiction of the resident or responsible person liable~~
 16 ~~for the payment. The resident or financially responsible~~
 17 ~~person is liable only for the per diem and ancillary charges~~
 18 ~~which the department has assessed and billed the resident or~~
 19 ~~financially responsible person. If amounts assessed and~~
 20 ~~billed are retroactively reduced because of a new~~
 21 ~~determination of ability to pay, the resident or financially~~
 22 ~~responsible person is liable only for the reduced amount for~~
 23 ~~the period of time covered by the retroactive reduction.~~

24 ~~(7) The department may, at any time, review and change~~
 25 ~~a determination for per diem or ancillary charge payments.~~

1 ~~In any case, however, a resident of an institution may not~~
 2 ~~be released by reason of the nonpayment of the per diem or~~
 3 ~~the ancillary charge, if in the judgment of the~~
 4 ~~superintendent of the institution at which he is a resident,~~
 5 ~~this release is medically inadvisable. No resident or~~
 6 financially responsible person is financially liable for
 7 care provided to a resident under any provision of a
 8 criminal statute.

9 (8) ~~A per diem payment received by the department~~
 10 ~~shall be deposited in the state treasury to the credit of~~
 11 ~~the general fund. A resident of an institution listed in~~
 12 80-1601 may not be released by reason of the nonpayment of
 13 the per diem or the ancillary charge unless, by
 14 certification of a physician consulted by the
 15 superintendent of the institution, the release is medically
 16 advisable.

17 (9) In the assessment of monthly per diem and
 18 ancillary charges, the department may not reduce the
 19 resident's financial net worth below an amount equal to 50%
 20 of the resident's original financial net worth as determined
 21 by the department."

22 Section 4. Section 80-1604, R.C.M. 1947, is amended to
 23 read as follows:

24 "80-1604. ~~Civil suit for collection of payments --~~
 25 ~~judgment lien -- claims against decedents' estates~~

1 Collection of per diem and ancillary charges -- claims
 2 against estates -- deposit of receipts. (1) If a resident or
 3 financially responsible person liable for per diem payments
 4 payment of per diem and ancillary charges due under this act
 5 chapter refuses or fails to make such payments the payment,
 6 the payments are it is collectible by the department of
 7 revenue in the manner set forth in Title 84, chapter 71, for
 8 the collection of debts owing to the state or by a civil
 9 suit brought by the department of revenue in the name of the
 10 state of Montana. The state of Montana may sue a resident
 11 or responsible person for payments due, and any judgment
 12 obtained is a lien upon the real property of such person,
 13 and shall be collected as other judgments. A claim arising
 14 under this act has the same force and effect against the
 15 real and personal property of a deceased person as other
 16 debts of a decedent, and shall be ascertained and recovered
 17 in the same manner.

18 (2) The state has a claim against the estate of a
 19 resident or against the estate of a financially responsible
 20 person for an amount due to the state at the death of the
 21 resident or financially responsible person. The attorney
 22 general shall collect any claim which the state may have
 23 against the estate. However, the claim may be enforced only
 24 to the extent that enforcement does not deprive a surviving
 25 spouse, child, or parent of the resident or responsible

1 person of:

2 (a) an amount necessary for reasonable living expenses
3 or educational expenses; or

4 (b) real estate while it is occupied as a home by the
5 surviving spouse, child, or parent of the resident or
6 financially responsible person.

7 (3) The department shall deposit payments of per diem
8 and ancillary charges in the state treasury to the credit of
9 the general fund."

10 Section 5. Section 80-1605, R.C.M. 1947, is amended to
11 read as follows:

12 "80-1605. Parental liability for costs incurred by
13 resident of institutions. (1) The natural or adoptive
14 parents of ~~persons who are~~ long-term residents at facilities
15 ~~owned or operated by the department of institutions shall~~
16 ~~only be~~ are liable ~~on~~ only for the charges made by each
17 ~~facility the department for treatment, care and maintenance~~
18 ~~for~~ in an amount not to exceed the cost of caring for a
19 normal child at home as determined from standard sources by
20 the department.

21 (2) ~~Parents~~ Natural or adoptive parents of a long-term
22 resident ~~in a facility owned or operated by the department~~
23 ~~shall~~ are not be liable for any charges made by ~~such~~
24 ~~facility the department for treatment, care and maintenance~~
25 of ~~such~~ a long-term resident incurred or accrued subsequent

1 to ~~each~~ the resident attaining age ~~eighteen~~ (18).

2 ~~(3) For purposes of this section the term "long-term~~
3 ~~resident" is defined as a person who has been a resident in~~
4 ~~a facility owned or operated by the department for a~~
5 ~~continuous period in excess of one hundred twenty (120)~~
6 ~~days. No absence of a resident from the facility due to a~~
7 ~~temporary or trial visit shall be counted as interrupting~~
8 ~~the accrual of the one hundred twenty (120) days herein~~
9 ~~required to attain the status of a long-term resident."~~

10 Section 6. Section 80-1606, R.C.M. 1947, is amended to
11 read as follows:

12 "~~80-1606. Relief from excess charges~~ Rules of the
13 department. This act is intended to relieve and shall be
14 construed to relieve any parent of any liability for charges
15 in excess of the limit set in section 1 [80-1605] of this
16 act for treatment, care and maintenance of a natural or
17 adoptive child at facilities owned or operated by the
18 department of institutions. In addition to the specific
19 provisions of this chapter which require the department to
20 make rules, the department may make rules for the
21 administration of this chapter. All rules made by the
22 department under the provisions of this chapter shall be
23 made pursuant to the provisions of the Montana
24 Administrative Procedure Act."

25 Section 7. There is a new section that reads as

1 follows:

2 Responsibility under prior law. No determination of
 3 ability to pay or assessment made under prior law is
 4 affected by the provisions of this act until the department
 5 has reviewed the determination and assessment in accordance
 6 with the provisions of this act. The department shall make
 7 the review no later than January 1, 1978.

8 Section 8. Section 38-210, R.C.M. 1947, is amended to
 9 read as follows:

10 "38-210. ~~Moneys~~ Money of ~~insane~~ seriously mentally ill
 11 person — disposal handling of. ~~When a person is adjudged~~
 12 ~~insane and ordered committed to the state hospital, or is~~
 13 ~~adjudged to be in such a condition of mind that he should be~~
 14 ~~placed in the state hospital for observation, the money~~
 15 ~~found on him at the time he is taken into custody must be~~
 16 ~~certified to by the judge, and sent with the person to the~~
 17 ~~state hospital. The money must be delivered to the~~
 18 ~~superintendent of the state hospital, whose receipt for the~~
 19 ~~money shall be taken by the officer or other person~~
 20 ~~delivering him to the hospital, who must file the receipt~~
 21 ~~with the clerk of the district court of the county in which~~
 22 ~~the proceedings were held. If the amount exceeds one hundred~~
 23 ~~dollars (\$100), the excess must be applied to the payment of~~
 24 ~~the expenses of the person while in the hospital. If the~~
 25 ~~amount is one hundred dollars (\$100) or less it must be kept~~

1 ~~and delivered to the person when discharged or released from~~
 2 ~~the hospital or applied in payment of funeral expenses if~~
 3 ~~the person dies while in the hospital. If an amount remains~~
 4 ~~to the credit of a person paroled, discharged, or released,~~
 5 ~~or after payment of the funeral expenses of the person who~~
 6 ~~dies while in the hospital, and the amount remains unclaimed~~
 7 ~~for one (1) year after the parole, discharge, release, or~~
 8 ~~death, fifty per cent (50%) of the amount, but not in any~~
 9 ~~event exceeding fifty dollars (\$50) shall be withdrawn from~~
 10 ~~the account and placed in the agency fund in the state~~
 11 ~~treasury, to be expended for indigent patients at the times~~
 12 ~~and in the manner and for such purpose as may be prescribed~~
 13 ~~by the superintendent of the hospital. A balance which~~
 14 ~~remains to the credit of the person, shall be transmitted to~~
 15 ~~the county treasurer of the county from which the person was~~
 16 ~~sent, and if a sum remains after paying the costs of~~
 17 ~~hearing, and transportation to the hospital, the balance~~
 18 ~~shall be paid into the state treasury to the credit of the~~
 19 ~~general fund. When any person is committed to a mental~~
 20 ~~health facility under the provisions of Title 38, chapter~~
 21 ~~13, the money found on him at the time he is taken into~~
 22 ~~custody must be handled according to other provisions of~~
 23 ~~Montana law applicable to the handling of money of persons~~
 24 ~~committed to a mental health facility."~~

25 Section 9. Section 10-1238, R.C.M. 1947, is amended to

1 read as follows:

2 "10-1238. Support of youth committed to a custodial
3 agency. When a youth under this act is committed by the
4 court to custody other than that of its parents, and no
5 provision is otherwise made by law for the support of such
6 youth, compensation for the care of such youth, when
7 approved by order of the court, shall be a charge upon the
8 county, or the appropriate division thereof. But the court
9 may, after giving the parent a reasonable opportunity to be
10 heard, adjudge and order that such parent shall pay in such
11 manner as the court may direct, such sum as will cover, in
12 whole or in part, the support of such youth, ~~provided,~~
13 ~~however that such sum shall not exceed the cost of~~
14 ~~reasonable care of a normal youth at home, and, in~~
15 determining the amount the parents must pay, the court shall
16 use the standards set out in Title 80, Chapter 16, and the
17 department of institution's rules governing payment for care
18 of residents of institutions, as those provisions and rules
19 apply to the youth and parents before the court. ~~if~~ If such
20 parent shall willfully fail or refuse to pay such sum, he
21 may be proceeded against as provided by law for cases of
22 desertion or failure to provide subsistence, or said cost
23 may be collected in a civil action against the parent or
24 parents."

25 Section 10. Section 10-1249, R.C.M. 1947, is amended

1 to read as follows:

2 "10-1249. Per diem charge to financially able parents.
3 A youth court judge placing a delinquent youth or a youth in
4 need of supervision in a district youth guidance home may,
5 ~~if the parent or parents of the youth are financially able,~~
6 ~~without undue hardship,~~ require the parents or parent to pay
7 to the district youth guidance home a per diem charge not to
8 exceed the per diem charge ~~established by the department of~~
9 ~~institutions for each youth placed in the Montana children's~~
10 ~~center under the standards set out in Title 80, Chapter 16,~~
11 and the department of institution's rules governing payments
12 for care of residents of institutions, as those provisions
13 and rules apply to the youth and parent or parents before
14 the court."

15 Section 11. Saving clause. This act does not affect
16 rights and duties that matured, penalties that were
17 incurred, or proceedings that were begun before the
18 effective date of this act.

19 Section 12. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

25 Section 13. Effective date. This act is effective on

LC 1579/01

1 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 382-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for House Bill 658 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to the payments for care of residents of institutions, district youth guidance homes, and custodial agencies.

ASSUMPTIONS:

1. The proposed legislation clarified the laws regarding reimbursements and, except for Section 80-1603(9), will have no fiscal impact.
2. Section 80-1603(9), providing that a resident's financial net worth may not be reduced below 50% of the resident's original financial net worth, will reduce the amount of Medicaid reimbursement received by the state since fewer residents will become Medicaid eligible.

FISCAL IMPACT:

A resident entering the institution with liquid assets in excess of \$3,000 and no income would never become Medicaid eligible under the proposed legislation, since these assets could not be reduced below \$1,500 which is the maximum allowable to be Medicaid eligible.

The fiscal impact cannot be determined without examining each resident's file.

Richard L. Franzen

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-77

FISCAL NOTE

REVISED

Form BD-15

In compliance with a written request received February 25, 1977, there is hereby submitted a Fiscal Note for House Bill 658 Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON HOUSE BILL 658

DESCRIPTION OF LEGISLATION:

An act relating to the payments for care of residents of institutions, district youth guidance homes, and custodial agencies.

ASSUMPTIONS:

1. Amendment: Adding "as budgeted." (See HB 658, page 2, lines 9 and 18,). General effect: The House Committee amendments added the words "as budgeted" to the definitions of "per diem" and "ancillary costs" in Section 80-1602. This amendment would allow the department to increase per diem and ancillary charges commensurate with current costs rather than historical costs, which in turn would increase Medicaid reimbursements.

NOTE: The term "cost" as used here means individual costs which Medicaid regulations allow for the purpose of computing an institution's cost for providing services in order to determine the amount of Medicaid reimbursements for that service.

Explanation: (1) Based on the salary increase from FY 76 to FY 77, budgeted costs for FY 77 would be 6.5% higher than FY 76 actual costs.

(2) If FY budgeted costs are 6.5% higher than actual FY 76 costs, Medicaid reimbursements for FY 77 would increase 6.5% so long as budgeted costs do not exceed actual FY 77 costs. (Medicaid law provides that Medicaid reimbursement cannot exceed actual costs. For example, if FY 77 actual costs were only 6.2% higher than budgeted FY 77 costs, Medicaid reimbursements would rise only 6.2%. The estimate below assumes that actual costs will be the same as budgeted costs.)

(3) If January, 1977 year-to-date collections represent 58.33% of total collections, Medicaid reimbursements would be \$3.24 million for FY 77 under current law.

2. Amendment: Deleting 50% asset limitation. (See HB 658, page 9, lines 18-22.) Effect: The House Committee deleted Section 80-1603(9) entirely. This deletion therefore totally nullifies the projected fiscal impact on Medicaid eligibility and reimbursements which was stated in the original fiscal note on this bill.

3. House Bill 658, as amended, has no fiscal impact except that explained under 1 above.

FISCAL IMPACT:

	<u>FY 77</u>
Revenue under current law	\$ 3.24 million
Revenue under HB 658	<u>3.45 million</u>
Increase to General Fund	\$.20 million

No attempt was made to project the effect on FY 79 revenues, because it is not known how many Medicaid eligible residents there will be, in view of deinstitutionalization. However, the same principles would apply to FY 78 and FY 79 as were applied to the estimate for FY 77, above. For example, if budgeted costs in FY 78 exceeded actual costs for FY 77, Medicaid reimbursements for FY 78 would increase in an amount equal to the excess, so long as budgeted costs for FY 78 did not exceed actual costs for FY 78. The same would be true of FY 79.

Richard L. Stangor
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-4-77

Approved by Committee
on Public Health, Welfare
& Safety

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9 80-1606, R.C.M. 1947; REPEALING SECTION 38-210; AND
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21 ~~(1) Montana children's center~~
22 ~~(2) Warm Springs state hospital;~~
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10 but not limited to, operating room, anesthesia, x-ray,
11 laboratory, blood bank, oxygen therapy, physical therapy,
12 medical supply, drug, and specialized medical equipment,
13 expenses.
14 (2) "Full-time equivalent resident load" means the
15 total daily resident count for the fiscal year divided by
16 the number of days in the year.
17 (3) "Per diem" means the gross daily cost of operating
18 an institution, AS BUDGETED, excluding the cost of
19 educational programs and ancillary charges, divided by the
20 full-time equivalent resident load. The per diem may be
21 computed separately for distinctively different programs--at
22 multipurpose--institutions. However, a schedule of differing
23 per diem charges may be computed, including a schedule of
24 charges for residents treated on an outpatient basis, for
25 each program established or funded by the legislature and

SECOND READING

1 ~~assigned to an institution listed in 80-1601.~~

2 (4) "Resident" means any person who is receiving care
3 from, or who is a resident of, an institution listed in
4 section 80-1601.

5 (5) ~~"Responsible financially responsible person" means~~
6 ~~a person--responsible--for--the--support--and--maintenance--of--a~~
7 ~~resident spouse of a resident, the natural or adoptive~~
8 ~~parents of a resident under 18 years of age, or a guardian~~
9 ~~or conservator to the extent of the guardian's or~~
10 ~~conservator's responsibility for the financial affairs of~~
11 ~~the person who is a resident under applicable Montana law~~
12 ~~establishing the duties and limitations of guardianships or~~
13 ~~conservatorships.~~

14 (6) ~~"Long-term resident" means a resident in an~~
15 ~~institution listed in 80-1601 for a continuous period in~~
16 ~~excess of 120 days. No absence of a resident from the~~
17 ~~institution due to a temporary or trial visit may be counted~~
18 ~~as interrupting the accrual of the 120 days required to~~
19 ~~attain the status of a long-term resident.~~

20 (7) ~~"Care" means the care, treatment, support,~~
21 ~~maintenance, and other services rendered by the department~~
22 ~~to a resident.~~

23 (8) ~~"Department" means the department of institutions~~
24 ~~provided for in Title 82A, chapter 8."~~

25 Section 3. Section 80-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "80-1603. Monthly assessment of charges -- annual
3 computation of rate -- investigation -- ~~claim--of--state~~
4 ~~ability to pay~~ -- review -- ~~deposit--of--receipts liability.~~

5 (1) The department shall assess monthly against each
6 resident or financially responsible person, the full per
7 diem charge, a proportionate share of the per diem charge,
8 or no per diem charge, plus full ancillary charge, a
9 proportionate share of the ancillary charge, or no ancillary
10 charge, based upon financial information given to the
11 department during its investigation ~~conducted according to~~
12 ~~the rules of the department.~~ The per diem shall be computed
13 on July 1 of each year by the department.

14 (2) An assessment made by the department under this
15 section shall be based on the resident's or financially
16 responsible person's ability to pay. ~~The department shall~~
17 ~~prescribe rules which establish criteria and a procedure for~~
18 ~~determining ability to pay.~~ The department ~~shall~~ may not
19 make an assessment which would place an undue financial
20 burden on the resident or the financially responsible
21 person.

22 (3) ~~(a) For the purpose of these investigations, every~~
23 ~~Each agency of the state is required to render shall give~~
24 all reasonable assistance to the department in obtaining all
25 information necessary for the proper ~~implementation--of--the~~

~~1 purposes of this financial investigation of residents or~~
~~2 financially responsible persons. A representative of the~~
~~3 department, duly authorized by the director, may administer~~
~~4 oaths, take testimony, subpoena and compel the attendance of~~
~~5 witnesses and the production of books, papers, records, and~~
~~6 documents in connection with the duty of securing payments~~
~~7 for support as provided by this act. A person who fails to~~
~~8 obey the subpoena upon petition of the department to any~~
~~9 judge of the district court of the state may be ordered by~~
~~10 the judge to appear and show cause for his disobedience of~~
~~11 the subpoena. The judge, after the hearing, may order that~~
~~12 the subpoena be obeyed, or if it is made to appear to the~~
~~13 judge that the subpoena was for any reason inappropriately~~
~~14 issued, may dismiss the petition. A person who fails to obey~~
~~15 the subpoena when ordered to do so by the judge may be~~
~~16 punished for contempt of court on application of the~~
~~17 district court by the department.~~

18 (b) Upon request of the department, the resident or
 19 financially responsible person shall make available to the
 20 department any financial information which the department
 21 considers essential for the purpose of determining ability
 22 to pay and which, under federal law, the department is not
 23 prohibited from seeking or obtaining from the resident or
 24 financially responsible person. Willful failure to provide
 25 the financial information requested by the department may

1 result in a determination of ability to pay up to the full
 2 per diem and full ancillary charges until such time as the
 3 requested information is provided and the department makes a
 4 new determination of ability to pay.

5 (c) (i) A representative of the department authorized
 6 by the director may administer oaths, take testimony, and
 7 subpoena and compel the attendance of witnesses and the
 8 production of books, papers, records, and documents in
 9 connection with the duty of securing payments for care as
 10 provided by this chapter.

11 (ii) A person who fails to obey the subpoena, upon
 12 petition of the department to any judge of a district court
 13 of the state, may be ordered by the judge to appear and show
 14 cause for his disobedience of the subpoena. The judge, after
 15 a hearing, may order that the subpoena be obeyed or, if it
 16 appears that the subpoena was inappropriately issued, may
 17 dismiss the petition. A person who fails to obey the
 18 subpoena when so ordered by the judge may be punished for
 19 contempt of court on application of the department to the
 20 district court.

21 ~~(4) The state has a claim against the estate of a~~
 22 ~~patient and against the estate of a responsible person for~~
 23 ~~an amount due to the state at the date of death of the~~
 24 ~~resident or the responsible person. The claim against the~~
 25 ~~estate of a responsible person does not have priority~~

1 ~~against the estate for the amount necessary to rear and~~
 2 ~~educate surviving children of the responsible person. If a~~
 3 ~~resident or financially responsible person disagrees with~~
 4 ~~the determination of the department as to his ability to pay~~
 5 ~~any part of the per diem or ancillary charge, an appeal may~~
 6 ~~be filed within 30 days of the date of the department's~~
 7 ~~determination with the board of institutions, according to~~
 8 ~~the procedure established by rules of the department. If the~~
 9 ~~resident or financially responsible person disagrees with~~
 10 ~~the determination of the appeal by the board of~~
 11 ~~institutions, an appeal may be filed in any court of record~~
 12 ~~in Montana having jurisdiction of the resident or~~
 13 ~~financially responsible person liable for payment.~~

14 (5) ~~The attorney general shall collect any claim which~~
 15 ~~the state may have against such estates. This claim may not~~
 16 ~~be enforced against any real estate while it is occupied as~~
 17 ~~a home by the surviving spouse or the resident or~~
 18 ~~responsible person. At appropriate intervals, the department~~
 19 ~~shall review each determination of ability to pay and, if~~
 20 ~~there has been a significant change in a resident's or~~
 21 ~~financially responsible person's ability to pay, shall make~~
 22 ~~a new determination. However, a new determination of ability~~
 23 ~~to pay may not be applied retroactively unless the new~~
 24 ~~determination results in a monthly assessment which is less~~
 25 ~~than the previous monthly assessment or unless the resident~~

1 ~~or financially responsible person has materially~~
 2 ~~misrepresented any financial information. The department~~
 3 ~~shall make rules to implement the provisions of this~~
 4 ~~subsection, including but not limited to rules for credit or~~
 5 ~~refund of any overpayment resulting from an assessment~~
 6 ~~retroactively reduced because of a new determination of~~
 7 ~~ability to pay.~~

8 (6) ~~If a resident or responsible person disagrees with~~
 9 ~~the determination of the department as to the ability of the~~
 10 ~~resident or responsible person to pay any part of the per~~
 11 ~~diem or ancillary charge, an appeal may be filed within~~
 12 ~~thirty (30) days of the determination with the board of~~
 13 ~~institutions. If the resident disagrees with the~~
 14 ~~determination of the appeal by the board of institutions, an~~
 15 ~~appeal may be filed in any court of record in Montana having~~
 16 ~~jurisdiction of the resident or responsible person liable~~
 17 ~~for the payments. The resident or financially responsible~~
 18 ~~person is liable only for the per diem and ancillary charges~~
 19 ~~which the department has assessed and billed the resident or~~
 20 ~~financially responsible person. If amounts assessed and~~
 21 ~~billed are retroactively reduced because of a new~~
 22 ~~determination of ability to pay, the resident or financially~~
 23 ~~responsible person is liable only for the reduced amount for~~
 24 ~~the period of time covered by the retroactive reduction.~~

25 (7) ~~The department may at any time review and change~~

1 ~~a determination for per diem or ancillary charge payments~~
 2 ~~in any case, however, a resident of an institution may not~~
 3 ~~be released by reason of the nonpayment of the per diem or~~
 4 ~~the ancillary charges, if in the judgment of the~~
 5 ~~superintendent of the institution at which he is a resident,~~
 6 ~~this release is medically inadvisable. No resident or~~
 7 ~~financially responsible person is financially liable for~~
 8 ~~care provided to a resident under any provision of a~~
 9 ~~criminal statute.~~

10 (8) ~~A per diem payment received by the department~~
 11 ~~shall be deposited in the state treasury to the credit of~~
 12 ~~the general fund. A resident of an institution listed in~~
 13 ~~80-1601 may not be released by reason of the nonpayment of~~
 14 ~~the per diem or the ancillary charge unless, by~~
 15 ~~certification of a physician consulted by the~~
 16 ~~superintendent of the institution, the release is medically~~
 17 ~~advisable.~~

18 ~~(9) In the assessment of monthly per diem and~~
 19 ~~ancillary charges, the department may not reduce the~~
 20 ~~resident's financial net worth below an amount equal to 50%~~
 21 ~~of the resident's original financial net worth as determined~~
 22 ~~by the department.~~

23 Section 4. Section 80-1604, R.C.M. 1947, is amended to
 24 read as follows:

25 "80-1604. ~~Civil suit for collection of payments---~~

1 ~~judgment lien --- claims against decedents' estates~~
 2 ~~Collection of per diem and ancillary charges -- claims~~
 3 ~~against estates -- deposit of receipts. (1) If a resident or~~
 4 ~~financially responsible person liable for per diem payments~~
 5 ~~payment of per diem and ancillary charges due under this act~~
 6 ~~chapter refuses or fails to make such payments the payment,~~
 7 ~~the payments are it is collectible by the department of~~
 8 ~~revenue in the manner set forth in Title 84, chapter 71, for~~
 9 ~~the collection of debts owing to the state or by a civil~~
 10 ~~suit brought by the department of revenue in the name of the~~
 11 ~~state of Montana. The state of Montana may sue a resident~~
 12 ~~or responsible person for payments due and any judgment~~
 13 ~~obtained is a lien upon the real property of such person~~
 14 ~~and shall be collected as other judgments. A claim arising~~
 15 ~~under this act has the same force and effect against the~~
 16 ~~real and personal property of a deceased person as other~~
 17 ~~debts of a decedent and shall be ascertained and recovered~~
 18 ~~in the same manner.~~

19 (2) ~~The state has a claim against the estate of a~~
 20 ~~resident or against the estate of a financially responsible~~
 21 ~~person for an amount due to the state at the death of the~~
 22 ~~resident or financially responsible person. The attorney~~
 23 ~~general shall collect any claim which the state may have~~
 24 ~~against the estate. However, the claim may be enforced only~~
 25 ~~to the extent that enforcement does not deprive a surviving~~

1 ~~spouse, child, or parent of the resident or FINANCIALLY~~
 2 ~~responsible person of:~~

3 ~~(a) an amount necessary for reasonable living expenses~~
 4 ~~or educational expenses; or~~

5 ~~(b) real estate while it is occupied as a home by the~~
 6 ~~surviving spouse, child, or parent of the resident or~~
 7 ~~financially responsible person.~~

8 ~~(3) The department shall deposit payments of per diem~~
 9 ~~and ancillary charges in the state treasury to the credit of~~
 10 ~~the general fund."~~

11 Section 5. Section 80-1605, R.C.M. 1947, is amended to
 12 read as follows:

13 "80-1605. Parental liability for costs incurred by
 14 resident of institutions. (1) The natural or adoptive
 15 parents of persons who are long-term residents at facilities
 16 owned or operated by the department of institutions shall
 17 only be are liable on only for the charges made by such
 18 facility the department for treatment, care and maintenance
 19 for in an amount not to exceed the cost of caring for a
 20 normal child at home as determined from standard sources by
 21 the department.

22 (2) Parents Natural or adoptive parents of a long-term
 23 resident ~~in a facility owned or operated by the department~~
 24 ~~shall~~ are not be liable for any charges made by such
 25 facility the department for treatment, care and maintenance

1 of such a long-term resident incurred or accrued subsequent
 2 to such the resident attaining age eighteen ~~(18)~~.

3 ~~(3) For purposes of this section the term "long-term~~
 4 ~~resident" is defined as a person who has been a resident in~~
 5 ~~a facility owned or operated by the department for a~~
 6 ~~continuous period in excess of one hundred twenty (120)~~
 7 ~~days. No absence of a resident from the facility due to a~~
 8 ~~temporary or trial visit shall be counted as interrupting~~
 9 ~~the accrual of the one hundred twenty (120) days herein~~
 10 ~~required to attain the status of a long-term resident."~~

11 Section 6. Section 80-1606, R.C.M. 1947, is amended to
 12 read as follows:

13 "80-1606. Relief from excess charges Rules of the
 14 department. This act is intended to relieve and shall be
 15 construed to relieve any parent of any liability for charges
 16 in excess of the limit set in section 1 [80-1605] of this
 17 act for treatment, care and maintenance of a natural or
 18 adoptive child at facilities owned or operated by the
 19 department of institutions. In addition to the specific
 20 provisions of this chapter which require the department to
 21 make rules, the department may make rules for the
 22 administration of this chapter. All rules made by the
 23 department under the provisions of this chapter shall be
 24 made pursuant to the provisions of the Montana
 25 Administrative Procedure Act."

1 Section 7. There is a new section that reads as
2 follows:

3 Responsibility under prior law. No determination of
4 ability to pay or assessment made under prior law is
5 affected by the provisions of this act until the department
6 has reviewed the determination and assessment in accordance
7 with the provisions of this act. The department shall make
8 the review no later than January 1, 1978 WITHIN 1 YEAR FROM
9 THE EFFECTIVE DATE OF RULES MADE UNDER THIS ACT FOR ABILITY
10 TO PAY DETERMINATIONS AND ASSESSMENTS.

11 ~~Section 8. Section 38-210, R.C.M. 1947, is amended to~~
12 ~~read as follows:~~

13 ~~"38-210. Money of insane seriously mentally ill~~
14 ~~person ~~disposal handling of.~~ When a person is adjudged~~
15 ~~insane and ordered committed to the state hospital or is~~
16 ~~adjudged to be in such a condition of mind that he should be~~
17 ~~placed in the state hospital for observation the money~~
18 ~~found on him at the time he is taken into custody must be~~
19 ~~certified to by the judge and sent with the person to the~~
20 ~~state hospital. The money must be delivered to the~~
21 ~~superintendent of the state hospital whose receipt for the~~
22 ~~money shall be taken by the officer or other person~~
23 ~~delivering him to the hospital who must file the receipt~~
24 ~~with the clerk of the district court of the county in which~~
25 ~~the proceedings were held. If the amount exceeds one hundred~~

1 ~~dollars (\$100), the excess must be applied to the payment of~~
2 ~~the expenses of the person while in the hospital. If the~~
3 ~~amount is one hundred dollars (\$100) or less it must be kept~~
4 ~~and delivered to the person when discharged or released from~~
5 ~~the hospital or applied in payment of funeral expenses if~~
6 ~~the person dies while in the hospital. If an amount remains~~
7 ~~to the credit of a person paroled, discharged, or released,~~
8 ~~or after payment of the funeral expenses of the person who~~
9 ~~dies while in the hospital and the amount remains unclaimed~~
10 ~~for one (1) year after the parole, discharge, release, or~~
11 ~~death, fifty per cent (50%) of the amount, but not in any~~
12 ~~event exceeding fifty dollars (\$50), shall be withdrawn from~~
13 ~~the account and placed in the agency fund in the state~~
14 ~~treasury to be expended for indigent patients at the times~~
15 ~~and in the manner and for such purposes as may be prescribed~~
16 ~~by the superintendent of the hospital. A balance which~~
17 ~~remains to the credit of the person shall be transmitted to~~
18 ~~the county treasurer of the county from which the person was~~
19 ~~sent, and if a sum remains after paying the costs of~~
20 ~~hearing and transportation to the hospital, the balance~~
21 ~~shall be paid into the state treasury to the credit of the~~
22 ~~general fund. When any person is committed to a mental~~
23 ~~health facility under the provisions of Title 38, chapter~~
24 ~~12, the money found on him at the time he is taken into~~
25 ~~custody must be handled according to other provisions of~~

1 ~~Montana law applicable to the handling of money of persons~~
 2 ~~committed to a mental health facility."~~

3 Section 8. Section 10-1238, R.C.M. 1947, is amended to
 4 read as follows:

5 "10-1238. Support of youth committed to a custodial
 6 agency. When a youth under this act is committed by the
 7 court to custody other than that of its parents, and no
 8 provision is otherwise made by law for the support of such
 9 youth, compensation for the care of such youth, when
 10 approved by order of the court, shall be a charge upon the
 11 county, or the appropriate division thereof. But the court
 12 may, after giving the parent a reasonable opportunity to be
 13 heard, adjudge and order that such parent shall pay in such
 14 manner as the court may direct, such sum as will cover, in
 15 whole or in part, the support of such youth, provided,
 16 however--that--such--sum--shall--not--exceed--the--cost--of
 17 reasonable--care--of--a--normal--youth--at--home--and, In
 18 determining the amount the parents must pay, the court shall
 19 use the standards set out in Title 80, chapter 16, and the
 20 department of institution's rules governing payment for care
 21 of residents of institutions, as those provisions and rules
 22 apply to the youth and parents before the court. If such
 23 parent shall willfully fail or refuse to pay such sum, he
 24 may be proceeded against as provided by law for cases of
 25 desertion or failure to provide subsistence, or said cost

1 may be collected in a civil action against the parent or
 2 parents."

3 Section 9. Section 10-1249, R.C.M. 1947, is amended to
 4 read as follows:

5 "10-1249. Per diem charge to financially able parents.
 6 A youth court judge placing a delinquent youth or a youth in
 7 need of supervision in a district youth guidance home may
 8 ~~if the parent or parents of the youth are financially able,~~
 9 ~~without undue hardship,~~ require the parents or parent to pay
 10 to the district youth guidance home a per diem charge not to
 11 exceed the per diem charge ~~established by the department of~~
 12 ~~institutions for each youth placed in the Montana children's~~
 13 center under the standards set out in Title 80, chapter 16,
 14 and the department of institution's rules governing payments
 15 for care of residents of institutions, as those provisions
 16 and rules apply to the youth and parent or parents before
 17 the court."

18 Section 10. Saving clause. This act does not affect
 19 rights and duties that matured, penalties that were
 20 incurred, or proceedings than were begun before the
 21 effective date of this act.

22 Section 11. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 SECTION 12. SECTION 38-210, R.C.M. 1947, IS REPEALED.

4 Section 13. Effective date. This act is effective on
5 its passage and approval.

-End-

1 HOUSE BILL NO. 658

2 INTRODUCED BY LYNCH

3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
6 PAYMENTS FOR CARE OF RESIDENTS OF INSTITUTIONS, DISTRICT
7 YOUTH GUIDANCE HOMES, AND CUSTODIAL AGENCIES; AMENDING
8 SECTIONS 10-1238, 10-1249, ~~38-210~~, AND 80-1601 THROUGH
9 80-1606, R.C.M. 1947; REPEALING SECTION 38-210; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 80-1601, R.C.M. 1947, is amended to
14 read as follows:

15 "80-1601. Institutions subject to per diem and
16 ancillary charge charges. The department of institutions
17 shall collect and process per diem and ancillary payments
18 for the care of residents in the following institutions and
19 ~~for the care of those persons in foster homes or group homes~~
20 ~~under provisions of the department:~~

21 ~~(1) Montana children's center~~

22 ~~(2)~~(1) Warm Springs state hospital;

23 ~~(3)~~(2) Boulder river school and hospital;

24 ~~(4)~~(3) Galen state hospital;

25 ~~(5)~~(4) Montana veterans' home;

1 ~~(6)~~(5) Montana center for the aged; and

2 ~~(7)~~(6) Eastmont training center."

3 Section 2. Section 80-1602, R.C.M. 1947, is amended to
4 read as follows:

5 "80-1602. Definition of terms. As used in this
6 chapter, unless the context requires otherwise the following
7 definitions apply:

8 (1) "Ancillary charge" means identifiable, direct,
9 patient resident service expenses, AS BUDGETED, including,
10 but not limited to, operating room, anesthesia, x-ray,
11 laboratory, blood bank, oxygen therapy, physical therapy,
12 medical supply, drug, and specialized medical equipment,
13 expenses.

14 (2) "Full-time equivalent resident load" means the
15 total daily resident count for the fiscal year divided by
16 the number of days in the year.

17 (3) "Per diem" means the gross daily cost of operating
18 an institution, AS BUDGETED, excluding the cost of
19 educational programs and ancillary charges, divided by the
20 full-time equivalent resident load. ~~The per diem may be~~
21 ~~computed separately for distinctively different programs at~~
22 ~~multipurpose institutions. However, a schedule of differing~~
23 ~~per diem charges may be computed, including a schedule of~~
24 ~~charges for residents treated on an outpatient basis, for~~
25 ~~each program established or funded by the legislature and~~

1 assigned to an institution listed in 80-1601.

2 (4) "Resident" means any person who is receiving care
3 from, or who is a resident of, an institution listed in
4 section 80-1601.

5 (5) "Responsible Financially responsible person" means
6 a person--responsible--for--the--support--and--maintenance--of--a
7 resident spouse of a resident, the natural or adoptive
8 parents of a resident under 18 years of age, or a guardian
9 or conservator to the extent of the guardian's or
10 conservator's responsibility for the financial affairs of
11 the person who is a resident under applicable Montana law
12 establishing the duties and limitations of guardianships or
13 conservatorships.

14 (6) "Long-term resident" means a resident in an
15 institution listed in 80-1601 for a continuous period in
16 excess of 120 days. No absence of a resident from the
17 institution due to a temporary or trial visit may be counted
18 as interrupting the accrual of the 120 days required to
19 attain the status of a long-term resident.

20 (7) "Care" means the care, treatment, support,
21 maintenance, and other services rendered by the department
22 to a resident.

23 (8) "Department" means the department of institutions
24 provided for in Title 82A, chapter 8."

25 Section 3. Section 80-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "80-1603. Monthly assessment of charges -- annual
3 computation of rate -- investigation -- ~~claim--of--state~~
4 ability to pay -- review -- ~~deposit-of-receipts liability.~~

5 (1) The department shall assess monthly against each
6 resident or financially responsible person, the full per
7 diem charge, a proportionate share of the per diem charge,
8 or no per diem charge, plus full ancillary charge, a
9 proportionate share of the ancillary charge, or no ancillary
10 charge, based upon financial information given to the
11 department during its investigation conducted according to
12 the rules of the department. The per diem shall be computed
13 on July 1 of each year by the department.

14 (2) An assessment made by the department under this
15 section shall be based on the resident's or financially
16 responsible person's ability to pay. The department shall
17 prescribe rules which establish criteria and a procedure for
18 determining ability to pay. The department shall ~~may~~ not
19 make an assessment which would place an undue financial
20 burden on the resident or the financially responsible
21 person.

22 (3) ~~(a) For the purpose of these investigations, every~~
23 Each agency of the state ~~is required to render~~ shall give
24 all reasonable assistance to the department in obtaining all
25 information necessary for the proper ~~implementation--of--the~~

April 6, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 658 be amended as follows:

1. Amend page 16, section 9, lines 3 through 17.

Following: line 2

Strike: lines 3 through 17 in their entirety.

Insert: "Section 9. Section 15, chapter 100, Laws of 1977, is amended to read as follows:

"Section 15. Section 10-1249, R.C.M. 1947, is amended to read as follows:

"10-1249. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may ~~if the parent or parents of the youth are financially able, without undue hardship,~~ require the parents or parent to pay to the district youth guidance home such a per diem charge as the judge may determine" under the standards set out in Title 80, chapter 16, and the department of institution's rules governing payments for care of residents of institutions, as those provisions and rules apply to the youth and parent or parents before the court." "

1 HOUSE BILL NO. 658
 2 INTRODUCED BY LYNCH
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 PAYMENTS FOR CARE OF RESIDENTS OF INSTITUTIONS, DISTRICT
 7 YOUTH GUIDANCE HOMES, AND CUSTODIAL AGENCIES; AMENDING
 8 SECTIONS 10-1238, 10-1249, ~~38-210~~, AND 80-1601 THROUGH
 9 80-1606, R.C.M. 1947; REPEALING SECTION 38-210; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 80-1601, R.C.M. 1947, is amended to
 14 read as follows:
 15 "80-1601. Institutions subject to per diem and
 16 ancillary charge charges. The department of institutions
 17 shall collect and process per diem and ancillary payments
 18 for the care of residents in the following institutions and
 19 ~~for the care of those persons in foster homes or group homes~~
 20 ~~under provisions of the department:~~
 21 ~~(1) Montana children's center~~
 22 (2)(1) Warm Springs state hospital;
 23 (3)(2) Boulder river school and hospital;
 24 (4)(3) Galen state hospital;
 25 (5)(4) Montana veterans' home;

1 ~~(6)(5)~~ Montana center for the aged; and
 2 ~~(7)(6)~~ Eastmont training center."
 3 Section 2. Section 80-1602, R.C.M. 1947, is amended to
 4 read as follows:
 5 "80-1602. Definition of terms. As used in this
 6 chapter, unless the context requires otherwise the following
 7 definitions apply:
 8 (1) "Ancillary charge" means identifiable, direct,
 9 patient resident service expenses, AS BUDGETED, including,
 10 but not limited to, operating room, anesthesia, x-ray,
 11 laboratory, blood bank, oxygen therapy, physical therapy,
 12 medical supply, drug, and specialized medical equipment,
 13 expenses.
 14 (2) "Full-time equivalent resident load" means the
 15 total daily resident count for the fiscal year divided by
 16 the number of days in the year.
 17 (3) "Per diem" means the gross daily cost of operating
 18 an institution, AS BUDGETED, excluding the cost of
 19 educational programs and ancillary charges, divided by the
 20 full-time equivalent resident load. ~~The per diem may be~~
 21 ~~computed separately for distinctively different programs--at~~
 22 ~~multipurpose--institutions. However, a schedule of differing~~
 23 ~~per diem charges may be computed, including a schedule of~~
 24 ~~charges for residents treated on an outpatient basis, for~~
 25 ~~each program established or funded by the legislature and~~

1 ~~assigned to an institution listed in 80-1601.~~

2 (4) "Resident" means any person who is receiving care
3 from, or who is a resident of, an institution listed in
4 section 80-1601.

5 (5) ~~"Responsible Financially responsible person" means~~
6 ~~a person responsible for the support and maintenance of a~~
7 ~~resident spouse of a resident, the natural or adoptive~~
8 ~~parents of a resident under 18 years of age, or a guardian~~
9 ~~or conservator to the extent of the guardian's or~~
10 ~~conservator's responsibility for the financial affairs of~~
11 ~~the person who is a resident under applicable Montana law~~
12 ~~establishing the duties and limitations of guardianships or~~
13 ~~conservatorships.~~

14 (6) ~~"Long-term resident" means a resident in an~~
15 ~~institution listed in 80-1601 for a continuous period in~~
16 ~~excess of 120 days. No absence of a resident from the~~
17 ~~institution due to a temporary or trial visit may be counted~~
18 ~~as interrupting the accrual of the 120 days required to~~
19 ~~attain the status of a long-term resident.~~

20 (7) ~~"Care" means the care, treatment, support,~~
21 ~~maintenance, and other services rendered by the department~~
22 ~~to a resident.~~

23 (8) ~~"Department" means the department of institutions~~
24 ~~provided for in Title 82A, chapter 8."~~

25 Section 3. Section 80-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "80-1603. Monthly assessment of charges -- annual
3 computation of rate -- investigation -- ~~claim-of-state~~
4 ~~ability to pay~~ -- review -- ~~deposit-of-receipts liability.~~

5 (1) The department shall assess monthly against each
6 resident or financially responsible person, the full per
7 diem charge, a proportionate share of the per diem charge,
8 or no per diem charge, plus full ancillary charge, a
9 proportionate share of the ancillary charge, or no ancillary
10 charge, based upon financial information given to the
11 department during its investigation conducted according to
12 the rules of the department. The per diem shall be computed
13 on July 1 of each year by the department.

14 (2) An assessment made by the department under this
15 section shall be based on the resident's or financially
16 responsible person's ability to pay. The department shall
17 prescribe rules which establish criteria and a procedure for
18 determining ability to pay. The department ~~shall~~ may not
19 make an assessment which would place an undue financial
20 burden on the resident or the financially responsible
21 person.

22 (3) ~~(a) For the purpose of these investigations, every~~
23 Each agency of the state is required to render shall give
24 all reasonable assistance to the department in obtaining all
25 information necessary for the proper ~~implementation of the~~

~~1 purposes of this financial investigation of residents or~~
~~2 financially responsible persons. A representative of the~~
~~3 department, duly authorized by the director, may administer~~
~~4 oaths, take testimony, subpoena and compel the attendance of~~
~~5 witnesses and the production of books, papers, records, and~~
~~6 documents in connection with the duty of securing payments~~
~~7 for support as provided by this act. A person who fails to~~
~~8 obey the subpoena upon petition of the department to any~~
~~9 judge of the district court of the state, may be ordered by~~
~~10 the judge to appear and show cause for his disobedience of~~
~~11 the subpoena. The judge, after the hearing, may order that~~
~~12 the subpoena be obeyed or if it is made to appear to the~~
~~13 judge that the subpoena was for any reason inappropriately~~
~~14 issued, may dismiss the petition. A person who fails to obey~~
~~15 the subpoena when ordered to do so by the judge may be~~
~~16 punished for contempt of court on application of the~~
~~17 district court by the department.~~

18 (b) Upon request of the department, the resident or
19 financially responsible person shall make available to the
20 department any financial information which the department
21 considers essential for the purpose of determining ability
22 to pay and which, under federal law, the department is not
23 prohibited from seeking or obtaining from the resident or
24 financially responsible person. Willful failure to provide
25 the financial information requested by the department may

1 result in a determination of ability to pay up to the full
2 per diem and full ancillary charges until such time as the
3 requested information is provided and the department makes a
4 new determination of ability to pay.

5 (c) (i) A representative of the department authorized
6 by the director may administer oaths, take testimony, and
7 subpoena and compel the attendance of witnesses and the
8 production of books, papers, records, and documents in
9 connection with the duty of securing payments for care as
10 provided by this chapter.

11 (ii) A person who fails to obey the subpoena, upon
12 petition of the department to any judge of a district court
13 of the state, may be ordered by the judge to appear and show
14 cause for his disobedience of the subpoena. The judge, after
15 a hearing, may order that the subpoena be obeyed or, if it
16 appears that the subpoena was inappropriately issued, may
17 dismiss the petition. A person who fails to obey the
18 subpoena when so ordered by the judge may be punished for
19 contempt of court on application of the department to the
20 district court.

21 (4) The state has a claim against the estate of a
22 patient and against the estate of a responsible person for
23 an amount due to the state at the date of death of the
24 resident or the responsible person. The claim against the
25 estate of a responsible person does not have priority

1 ~~against the estate for the amount necessary to rear and~~
 2 ~~educate surviving children of the responsible person. If a~~
 3 resident or financially responsible person disagrees with
 4 the determination of the department as to his ability to pay
 5 any part of the per diem or ancillary charge, an appeal may
 6 be filed within 30 days of the date of the department's
 7 determination with the board of institutions, according to
 8 the procedure established by rules of the department. If the
 9 resident or financially responsible person disagrees with
 10 the determination of the appeal by the board of
 11 institutions, an appeal may be filed in any court of record
 12 in Montana having jurisdiction of the resident or
 13 financially responsible person liable for payment.

14 (5) ~~The attorney general shall collect any claim which~~
 15 ~~the state may have against such estate. This claim may not~~
 16 ~~be enforced against any real estate while it is occupied as~~
 17 ~~a home by the surviving spouse or the resident or~~
 18 ~~responsible person. At appropriate intervals, the department~~
 19 shall review each determination of ability to pay and, if
 20 there has been a significant change in a resident's or
 21 financially responsible person's ability to pay, shall make
 22 a new determination. However, a new determination of ability
 23 to pay may not be applied retroactively unless the new
 24 determination results in a monthly assessment which is less
 25 than the previous monthly assessment or unless the resident

1 or financially responsible person has materially
 2 misrepresented any financial information. The department
 3 shall make rules to implement the provisions of this
 4 subsection, including but not limited to rules for credit or
 5 refund of any overpayment resulting from an assessment
 6 retroactively reduced because of a new determination of
 7 ability to pay.

8 (6) ~~if a resident or responsible person disagrees with~~
 9 ~~the determination of the department as to the ability of the~~
 10 ~~resident or responsible person to pay any part of the per~~
 11 ~~diem or ancillary charge, an appeal may be filed within~~
 12 ~~thirty (30) days of the determination with the board of~~
 13 ~~institutions. If the resident disagrees with the~~
 14 ~~determination of the appeal by the board of institutions, an~~
 15 ~~appeal may be filed in any court of record in Montana having~~
 16 ~~jurisdiction of the resident or responsible person liable~~
 17 ~~for the payments. The resident or financially responsible~~
 18 ~~person is liable only for the per diem and ancillary charges~~
 19 ~~which the department has assessed and billed the resident or~~
 20 ~~financially responsible person. If amounts assessed and~~
 21 ~~billed are retroactively reduced because of a new~~
 22 ~~determination of ability to pay, the resident or financially~~
 23 ~~responsible person is liable only for the reduced amount for~~
 24 ~~the period of time covered by the retroactive reduction.~~

25 (7) ~~The department may at any time review and change~~

1 ~~a determination for per diem or ancillary charge payments~~
 2 ~~in any case; however, a resident of an institution may not~~
 3 ~~be released by reason of the nonpayment of the per diem or~~
 4 ~~the ancillary charge, if in the judgment of the~~
 5 ~~superintendent of the institution at which he is a resident,~~
 6 ~~this release is medically inadvisable. No resident or~~
 7 ~~financially responsible person is financially liable for~~
 8 ~~care provided to a resident under any provision of a~~
 9 ~~criminal statute.~~

10 (8) ~~A per diem payment received by the department~~
 11 ~~shall be deposited in the state treasury to the credit of~~
 12 ~~the general fund. A resident of an institution listed in~~
 13 ~~80-1601 may not be released by reason of the nonpayment of~~
 14 ~~the per diem or the ancillary charge unless, by~~
 15 ~~certification of a physician consulted by the~~
 16 ~~superintendent of the institution, the release is medically~~
 17 ~~advisable.~~

18 ~~(9) In the assessment of monthly per diem and~~
 19 ~~ancillary charges, the department may not reduce the~~
 20 ~~resident's financial net worth below an amount equal to 50%~~
 21 ~~of the resident's original financial net worth as determined~~
 22 ~~by the department.~~

23 Section 4. Section 80-1604, R.C.M. 1947, is amended to
 24 read as follows:

25 "80-1604. ~~Civil suit for collection of payments~~

1 ~~judgment lien claims against decedent's estates~~
 2 ~~Collection of per diem and ancillary charges -- claims~~
 3 ~~against estates -- deposit of receipts. (1) If a resident or~~
 4 ~~financially responsible person liable for per diem payments~~
 5 ~~payment of per diem and ancillary charges due under this act~~
 6 ~~chapter refuses or fails to make such payments the payment,~~
 7 ~~the payments are it is collectible by the department of~~
 8 ~~revenue in the manner set forth in Title 84, chapter 71, for~~
 9 ~~the collection of debts owing to the state or by a civil~~
 10 ~~suit brought by the department of revenue in the name of the~~
 11 ~~state of Montana. The state of Montana may sue a resident~~
 12 ~~or responsible person for payments due and any judgment~~
 13 ~~obtained is a lien upon the real property of such person,~~
 14 ~~and shall be collected as other judgments. A claim arising~~
 15 ~~under this act has the same force and effect against the~~
 16 ~~real and personal property of a deceased person as other~~
 17 ~~debts of a decedent, and shall be ascertained and recovered~~
 18 ~~in the same manner.~~

19 (2) ~~The state has a claim against the estate of a~~
 20 ~~resident or against the estate of a financially responsible~~
 21 ~~person for an amount due to the state at the death of the~~
 22 ~~resident or financially responsible person. The attorney~~
 23 ~~general shall collect any claim which the state may have~~
 24 ~~against the estate. However, the claim may be enforced only~~
 25 ~~to the extent that enforcement does not deprive a surviving~~

1 spouse, child, or parent of the resident or FINANCIALLY
2 responsible person of:

3 (a) an amount necessary for reasonable living expenses
4 or educational expenses; or

5 (b) real estate while it is occupied as a home by the
6 surviving spouse, child, or parent of the resident or
7 financially responsible person.

8 (3) The department shall deposit payments of per diem
9 and ancillary charges in the state treasury to the credit of
10 the general fund."

11 Section 5. Section 80-1605, R.C.M. 1947, is amended to
12 read as follows:

13 "80-1605. Parental liability for costs incurred by
14 resident of institutions. (1) The natural or adoptive
15 parents of persons who are long-term residents at facilities
16 owned or operated by the department of institutions shall
17 only be ~~are~~ liable on only for the charges made by such
18 facility ~~the department~~ for treatment, care and maintenance
19 for in an amount not to exceed the cost of caring for a
20 normal child at home as determined from standard sources by
21 the department.

22 (2) Parents Natural or adoptive parents of a long-term
23 resident in a facility owned or operated by the department
24 shall ~~are~~ not be liable for any charges made by such
25 facility ~~the department~~ for treatment, care and maintenance

1 of such a long-term resident incurred or accrued subsequent
2 to such ~~the~~ resident attaining age eighteen (18).

3 ~~(3) For purposes of this section the term "long-term~~
4 ~~resident" is defined as a person who has been a resident in~~
5 ~~a facility owned or operated by the department for a~~
6 ~~continuous period in excess of one hundred twenty (120)~~
7 ~~days. No absence of a resident from the facility due to a~~
8 ~~temporary or trial visit shall be counted as interrupting~~
9 ~~the accrual of the one hundred twenty (120) days herein~~
10 ~~required to attain the status of a long-term resident."~~

11 Section 6. Section 80-1606, R.C.M. 1947, is amended to
12 read as follows:

13 "80-1606. ~~Relief from excess charges~~ Rules of the
14 department. This act is intended to relieve and shall be
15 construed to relieve any parent of any liability for charges
16 in excess of the limit set in section 1 (80-1605) of this
17 act for treatment, care and maintenance of a natural or
18 adoptive child at facilities owned or operated by the
19 department of institutions. In addition to the specific
20 provisions of this chapter which require the department to
21 make rules, the department may make rules for the
22 administration of this chapter. All rules made by the
23 department under the provisions of this chapter shall be
24 made pursuant to the provisions of the Montana
25 Administrative Procedure Act."

1 Section 7. There is a new section that reads as
2 follows:

3 Responsibility under prior law. No determination of
4 ability to pay or assessment made under prior law is
5 affected by the provisions of this act until the department
6 has reviewed the determination and assessment in accordance
7 with the provisions of this act. The department shall make
8 the review no later than January 1, 1970 WITHIN 1 YEAR FROM
9 THE EFFECTIVE DATE OF RULES MADE UNDER THIS ACT FOR ABILITY
10 TO PAY DETERMINATIONS AND ASSESSMENTS.

11 Section 8. ~~Section 30-210, R.C.M., 1947, is amended to~~
12 ~~read as follows:~~

13 ~~"30-210. Money of insane seriously mentally ill~~
14 ~~person disposal handling of. When a person is adjudged~~
15 ~~insane and ordered committed to the state hospital or is~~
16 ~~adjudged to be in such a condition of mind that he should be~~
17 ~~placed in the state hospital for observation, the money~~
18 ~~found on him at the time he is taken into custody must be~~
19 ~~certified to by the judge and sent with the person to the~~
20 ~~state hospital. The money must be delivered to the~~
21 ~~superintendent of the state hospital whose receipt for the~~
22 ~~money shall be taken by the officer or other person~~
23 ~~delivering him to the hospital, who must file the receipt~~
24 ~~with the clerk of the district court of the county in which~~
25 ~~the proceedings were held. If the amount exceeds one hundred~~

1 ~~dollars (\$100), the excess must be applied to the payment of~~
2 ~~the expenses of the person while in the hospital. If the~~
3 ~~amount is one hundred dollars (\$100) or less it must be kept~~
4 ~~and delivered to the person when discharged or released from~~
5 ~~the hospital or applied in payment of funeral expenses if~~
6 ~~the person dies while in the hospital. If an amount remains~~
7 ~~to the credit of a person paroled, discharged, or released,~~
8 ~~or after payment of the funeral expenses of the person who~~
9 ~~dies while in the hospital, and the amount remains unclaimed~~
10 ~~for one (1) year after the parole, discharge, release, or~~
11 ~~death, fifty per cent (50%) of the amount, but not in any~~
12 ~~event exceeding fifty dollars (\$50) shall be withdrawn from~~
13 ~~the account and placed in the agency fund in the state~~
14 ~~treasury to be expended for indigent patients at the times~~
15 ~~and in the manner and for such purposes as may be prescribed~~
16 ~~by the superintendent of the hospital. A balance which~~
17 ~~remains to the credit of the person, shall be transmitted to~~
18 ~~the county treasurer of the county from which the person was~~
19 ~~sent, and if a sum remains after paying the costs of~~
20 ~~hearing and transportation to the hospital, the balance~~
21 ~~shall be paid into the state treasury to the credit of the~~
22 ~~general fund. When any person is committed to a mental~~
23 ~~health facility under the provisions of Title 30, chapter~~
24 ~~13, the money found on him at the time he is taken into~~
25 ~~custody must be handled according to other provisions of~~

1 ~~Montana law applicable to the handling of money of persons~~
 2 ~~committed to a mental health facility."~~

3 Section 8. Section 10-1238, R.C.M. 1947, is amended to
 4 read as follows:

5 "10-1238. Support of youth committed to a custodial
 6 agency. When a youth under this act is committed by the
 7 court to custody other than that of its parents, and no
 8 provision is otherwise made by law for the support of such
 9 youth, compensation for the care of such youth, when
 10 approved by order of the court, shall be a charge upon the
 11 county, or the appropriate division thereof. But the court
 12 may, after giving the parent a reasonable opportunity to be
 13 heard, adjudge and order that such parent shall pay in such
 14 manner as the court may direct, such sum as will cover, in
 15 whole or in part, the support of such youth ~~provided,~~
 16 ~~however that such sum shall not exceed the cost of~~
 17 ~~reasonable care of a normal youth at home, and, in~~
 18 ~~determining the amount the parents must pay, the court shall~~
 19 ~~use the standards set out in Title 80, chapter 16, and the~~
 20 ~~department of institution's rules governing payment for care~~
 21 ~~of residents of institutions, as those provisions and rules~~
 22 ~~apply to the youth and parents before the court.~~ If such
 23 parent shall willfully fail or refuse to pay such sum, he
 24 may be proceeded against as provided by law for cases of
 25 desertion or failure to provide subsistence, or said cost

1 may be collected in a civil action against the parent or
 2 parents."

3 Section 9. Section 10-1249, R.C.M. 1947, is amended to
 4 read as follows:

5 "10-1249. Per diem charge to financially able parents.
 6 A youth court judge placing a delinquent youth or a youth in
 7 need of supervision in a district youth guidance home may
 8 ~~if the parent or parents of the youth are financially able,~~
 9 ~~without undue hardship,~~ require the parents or parent to pay
 10 to the district youth guidance home a per diem charge not to
 11 exceed the per diem charge ~~established by the department of~~
 12 ~~institutions for each youth placed in the Montana children's~~
 13 ~~center under the standards set out in Title 80, chapter 16,~~
 14 ~~and the department of institution's rules governing payments~~
 15 ~~for care of residents of institutions, as those provisions~~
 16 ~~and rules apply to the youth and parent or parents before~~
 17 ~~the court."~~

18 Section 10. Saving clause. This act does not affect
 19 rights and duties that matured, penalties that were
 20 incurred, or proceedings than were begun before the
 21 effective date of this act.

22 Section 11. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 ~~SECTION 12. SECTION 38-210, R.C.M. 1947, IS REPEALED.~~

4 Section 13. Effective date. This act is effective on
5 its passage and approval.

-End-

1 HOUSE BILL NO. 658
 2 INTRODUCED BY LYNCH
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE
 6 PAYMENTS FOR CARE OF RESIDENTS OF INSTITUTIONS, DISTRICT
 7 YOUTH GUIDANCE HOMES, AND CUSTODIAL AGENCIES; AMENDING
 8 SECTIONS 10-1238, 10-1249, ~~38-210~~, AND 80-1601 THROUGH
 9 80-1606, R.C.M. 1947; REPEALING SECTION 38-210; AND
 10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 80-1601, R.C.M. 1947, is amended to
 14 read as follows:
 15 "80-1601. Institutions subject to per diem and
 16 ancillary charge charges. The department of institutions
 17 shall collect and process per diem and ancillary payments
 18 for the care of residents in the following institutions and
 19 for-the-care-of-those-persons-in-foster-homes-or-group-homes
 20 under-provisions-of-the-department:
 21 ~~(1) Montana children's center~~
 22 ~~(2) Warm Springs state hospital;~~
 23 ~~(3) Boulder river school and hospital;~~
 24 ~~(4) Galen state hospital;~~
 25 ~~(5) Montana veterans' home;~~

1 ~~(5)~~ Montana center for the aged; and
 2 ~~(6)~~ Eastmont training center."
 3 Section 2. Section 80-1602, R.C.M. 1947, is amended to
 4 read as follows:
 5 "80-1602. Definition of terms. As used in this
 6 chapter, unless the context requires otherwise the following
 7 definitions apply:
 8 (1) "Ancillary charge" means identifiable, direct,
 9 patient resident service expenses, AS BUDGETED, including,
 10 but not limited to, operating room, anesthesia, x-ray,
 11 laboratory, blood bank, oxygen therapy, physical therapy,
 12 medical supply, drug, and specialized medical equipment,
 13 expenses.
 14 (2) "Full-time equivalent resident load" means the
 15 total daily resident count for the fiscal year divided by
 16 the number of days in the year.
 17 (3) "Per diem" means the gross daily cost of operating
 18 an institution, AS BUDGETED, excluding the cost of
 19 educational programs and ancillary charges, divided by the
 20 full-time equivalent resident load. The per diem may be
 21 computed separately for distinctively different programs at
 22 multipurpose institutions. However, a schedule of differing
 23 per diem charges may be computed, including a schedule of
 24 charges for residents treated on an outpatient basis, for
 25 each program established or funded by the legislature and

1 assigned to an institution listed in 80-1601.

2 (4) "Resident" means any person who is receiving care
3 from, or who is a resident of, an institution listed in
4 section 80-1601.

5 (5) "Responsible Financially responsible person" means
6 a person--responsible--for--the--support--and--maintenance--of--a
7 resident spouse of a resident, the natural or adoptive
8 parents of a resident under 18 years of age, or a guardian
9 or conservator to the extent of the guardian's or
10 conservator's responsibility for the financial affairs of
11 the person who is a resident under applicable Montana law
12 establishing the duties and limitations of guardianships or
13 conservatorships.

14 (6) "Long-term resident" means a resident in an
15 institution listed in 80-1601 for a continuous period in
16 excess of 120 days. No absence of a resident from the
17 institution due to a temporary or trial visit may be counted
18 as interrupting the accrual of the 120 days required to
19 attain the status of a long-term resident.

20 (7) "Care" means the care, treatment, support,
21 maintenance, and other services rendered by the department
22 to a resident.

23 (8) "Department" means the department of institutions
24 provided for in Title 82A, chapter 8."

25 Section 3. Section 80-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "80-1603. Monthly assessment of charges -- annual
3 computation of rate -- investigation -- ~~claim--of--state~~
4 ability to pay -- review -- ~~deposit-of-receipts liability.~~

5 (1) The department shall assess monthly against each
6 resident or financially responsible person, the full per
7 diem charge, a proportionate share of the per diem charge,
8 or no per diem charge, plus full ancillary charge, a
9 proportionate share of the ancillary charge, or no ancillary
10 charge, based upon financial information given to the
11 department during its investigation conducted according to
12 the rules of the department. The per diem shall be computed
13 on July 1 of each year by the department.

14 (2) An assessment made by the department under this
15 section shall be based on the resident's or financially
16 responsible person's ability to pay. The department shall
17 prescribe rules which establish criteria and a procedure for
18 determining ability to pay. The department ~~shall~~ may not
19 make an assessment which would place an undue financial
20 burden on the resident or the financially responsible
21 person.

22 (3) ~~(a) For the purpose of these investigations, every~~
23 Each agency of the state is required to render shall give
24 all reasonable assistance to the department in obtaining all
25 information necessary for the proper ~~implementation--of--the~~

1 purposes--of--this financial investigation of residents or
 2 financially responsible persons. ~~A representative of the~~
 3 ~~department's duty authorized by the director may administer~~
 4 ~~oaths, take testimony, subpoena and compel the attendance of~~
 5 ~~witnesses and the production of books, papers, records, and~~
 6 ~~documents in connection with the duty of securing payments~~
 7 ~~for support as provided by this act. A person who fails to~~
 8 ~~obey the subpoena upon petition of the department to any~~
 9 ~~judge of the district court of the state may be ordered by~~
 10 ~~the judge to appear and show cause for his disobedience of~~
 11 ~~the subpoena. The judge, after the hearing, may order that~~
 12 ~~the subpoena be obeyed or if it is made to appear to the~~
 13 ~~judge that the subpoena was for any reason inappropriately~~
 14 ~~issued, may dismiss the petition. A person who fails to obey~~
 15 ~~the subpoena when ordered to do so by the judge may be~~
 16 ~~punished for contempt of court on application of the~~
 17 ~~district court by the department.~~

18 (b) Upon request of the department, the resident or
 19 financially responsible person shall make available to the
 20 department any financial information which the department
 21 considers essential for the purpose of determining ability
 22 to pay and which, under federal law, the department is not
 23 prohibited from seeking or obtaining from the resident or
 24 financially responsible person. Willful failure to provide
 25 the financial information requested by the department may

1 result in a determination of ability to pay up to the full
 2 per diem and full ancillary charges until such time as the
 3 requested information is provided and the department makes a
 4 new determination of ability to pay.

5 (c) (i) A representative of the department authorized
 6 by the director may administer oaths, take testimony, and
 7 subpoena and compel the attendance of witnesses and the
 8 production of books, papers, records, and documents in
 9 connection with the duty of securing payments for care as
 10 provided by this chapter.

11 (ii) A person who fails to obey the subpoena, upon
 12 petition of the department to any judge of a district court
 13 of the state, may be ordered by the judge to appear and show
 14 cause for his disobedience of the subpoena. The judge, after
 15 a hearing, may order that the subpoena be obeyed or, if it
 16 appears that the subpoena was inappropriately issued, may
 17 dismiss the petition. A person who fails to obey the
 18 subpoena when so ordered by the judge may be punished for
 19 contempt of court on application of the department to the
 20 district court.

21 (4) ~~The state has a claim against the estate of a~~
 22 ~~patient and against the estate of a responsible person for~~
 23 ~~an amount due to the state at the date of death of the~~
 24 ~~resident or the responsible person. The claim against the~~
 25 ~~estate of a responsible person does not have priority~~

1 ~~against the estate for the amount necessary to rear and~~
 2 ~~educate surviving children of the responsible person. If a~~
 3 ~~resident or financially responsible person disagrees with~~
 4 ~~the determination of the department as to his ability to pay~~
 5 ~~any part of the per diem or ancillary charge, an appeal may~~
 6 ~~be filed within 30 days of the date of the department's~~
 7 ~~determination with the board of institutions, according to~~
 8 ~~the procedure established by rules of the department. If the~~
 9 ~~resident or financially responsible person disagrees with~~
 10 ~~the determination of the appeal by the board of~~
 11 ~~institutions, an appeal may be filed in any court of record~~
 12 ~~in Montana having jurisdiction of the resident or~~
 13 ~~financially responsible person liable for payment.~~

14 (5) ~~The attorney general shall collect any claim which~~
 15 ~~the state may have against such estate. This claim may not~~
 16 ~~be enforced against any real estate while it is occupied as~~
 17 ~~a home by the surviving spouse or the resident or~~
 18 ~~responsible person. At appropriate intervals, the department~~
 19 ~~shall review each determination of ability to pay and, if~~
 20 ~~there has been a significant change in a resident's or~~
 21 ~~financially responsible person's ability to pay, shall make~~
 22 ~~a new determination. However, a new determination of ability~~
 23 ~~to pay may not be applied retroactively unless the new~~
 24 ~~determination results in a monthly assessment which is less~~
 25 ~~than the previous monthly assessment or unless the resident~~

1 ~~or financially responsible person has materially~~
 2 ~~misrepresented any financial information. The department~~
 3 ~~shall make rules to implement the provisions of this~~
 4 ~~subsection, including but not limited to rules for credit or~~
 5 ~~refund of any overpayment resulting from an assessment~~
 6 ~~retroactively reduced because of a new determination of~~
 7 ~~ability to pay.~~

8 (6) ~~If a resident or responsible person disagrees with~~
 9 ~~the determination of the department as to the ability of the~~
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 12 ~~thirty (30) days of the determination with the board of~~
 13 ~~institutions. If the resident disagrees with the~~
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 15 ~~appeal may be filed in any court of record in Montana having~~
 16 ~~jurisdiction of the resident or responsible person liable~~
 17 ~~for the payment. The resident or financially responsible~~
 18 ~~person is liable only for the per diem and ancillary charges~~
 19 ~~which the department has assessed and billed the resident or~~
 20 ~~financially responsible person. If amounts assessed and~~
 21 ~~billed are retroactively reduced because of a new~~
 22 ~~determination of ability to pay, the resident or financially~~
 23 ~~responsible person is liable only for the reduced amount for~~
 24 ~~the period of time covered by the retroactive reduction.~~

25 (7) ~~The department may, at any time, review and change~~

1 ~~a determination for per diem or ancillary charge payments~~
 2 ~~in any case, however, a resident of an institution may not~~
 3 ~~be released by reason of the nonpayment of the per diem or~~
 4 ~~the ancillary charge, if in the judgment of the~~
 5 ~~superintendent of the institution at which he is a resident,~~
 6 ~~this release is medically inadvisable. No resident or~~
 7 ~~financially responsible person is financially liable for~~
 8 ~~care provided to a resident under any provision of a~~
 9 ~~criminal statute.~~

10 (8) ~~A per diem payment received by the department~~
 11 ~~shall be deposited in the state treasury to the credit of~~
 12 ~~the general fund. A resident of an institution listed in~~
 13 ~~80-1601 may not be released by reason of the nonpayment of~~
 14 ~~the per diem or the ancillary charge unless, by~~
 15 ~~certification of a physician consulted by the~~
 16 ~~superintendent of the institution, the release is medically~~
 17 ~~advisable.~~

18 ~~(9) In the assessment of monthly per diem and~~
 19 ~~ancillary charges, the department may not reduce the~~
 20 ~~resident's financial net worth below an amount equal to 50%~~
 21 ~~of the resident's original financial net worth as determined~~
 22 ~~by the department.~~

23 Section 4. Section 80-1604, R.C.M. 1947, is amended to
 24 read as follows:

25 "80-1604. ~~Civil suit for collection of payments~~

1 ~~judgment lien claims against decedents' estates~~
 2 ~~Collection of per diem and ancillary charges -- claims~~
 3 ~~against estates -- deposit of receipts. (1) If a resident or~~
 4 ~~financially responsible person liable for per diem payments~~
 5 ~~payment of per diem and ancillary charges due under this act~~
 6 ~~chapter refuses or fails to make such payments the payment,~~
 7 ~~the payments are it is collectible by the department of~~
 8 ~~revenue in the manner set forth in Title 84, chapter 71, for~~
 9 ~~the collection of debts owing to the state or by a civil~~
 10 ~~suit brought by the department of revenue in the name of the~~
 11 ~~state of Montana. The state of Montana may sue a resident~~
 12 ~~or responsible person for payments due, and any judgment~~
 13 ~~obtained is a lien upon the real property of such person,~~
 14 ~~and shall be collected as other judgments. A claim arising~~
 15 ~~under this act has the same force and effect against the~~
 16 ~~real and personal property of a deceased person as other~~
 17 ~~debts of a decedent, and shall be ascertained and recovered~~
 18 ~~in the same manner.~~

19 (2) ~~The state has a claim against the estate of a~~
 20 ~~resident or against the estate of a financially responsible~~
 21 ~~person for an amount due to the state at the death of the~~
 22 ~~resident or financially responsible person. The attorney~~
 23 ~~general shall collect any claim which the state may have~~
 24 ~~against the estate. However, the claim may be enforced only~~
 25 ~~to the extent that enforcement does not deprive a surviving~~

1 spouse, child, or parent of the resident or FINANCIALLY
2 responsible person of:

3 (a) an amount necessary for reasonable living expenses
4 or educational expenses; or

5 (b) real estate while it is occupied as a home by the
6 surviving spouse, child, or parent of the resident or
7 financially responsible person.

8 (3) The department shall deposit payments of per diem
9 and ancillary charges in the state treasury to the credit of
10 the general funds."

11 Section 5. Section 80-1605, R.C.M. 1947, is amended to
12 read as follows:

13 "80-1605. Parental liability for costs incurred by
14 resident of institutions. (1) The natural or adoptive
15 parents of persons who are long-term residents at facilities
16 owned or operated by the department of institutions shall
17 only be are liable on only for the charges made by such
18 facility the department for treatment, care and maintenance
19 for in an amount not to exceed the cost of caring for a
20 normal child at home as determined from standard sources by
21 the department.

22 (2) Parents Natural or adoptive parents of a long-term
23 resident in a facility owned or operated by the department
24 shall are not be liable for any charges made by such
25 facility the department for treatment, care and maintenance

1 of such a long-term resident incurred or accrued subsequent
2 to such the resident attaining age eighteen (18).

3 ~~(3) for purposes of this section the term "long-term~~
4 ~~resident" is defined as a person who has been a resident in~~
5 ~~a facility owned or operated by the department for a~~
6 ~~continuous period in excess of one hundred twenty (120)~~
7 ~~days. No absence of a resident from the facility due to a~~
8 ~~temporary or trial visit shall be counted as interrupting~~
9 ~~the accrual of the one hundred twenty (120) days herein~~
10 ~~required to attain the status of a long-term resident."~~

11 Section 6. Section 80-1606, R.C.M. 1947, is amended to
12 read as follows:

13 "~~80-1606. Relief from excess charges~~ Rules of the
14 department. This act is intended to relieve and shall be
15 construed to relieve any parent of any liability for charges
16 in excess of the limit set in section 2 [80-1605] of this
17 act for treatment, care and maintenance of a natural or
18 adoptive child at facilities owned or operated by the
19 department of institutions. In addition to the specific
20 provisions of this chapter which require the department to
21 make rules, the department may make rules for the
22 administration of this chapter. All rules made by the
23 department under the provisions of this chapter shall be
24 made pursuant to the provisions of the Montana
25 Administrative Procedure Act."

1 Section 7. There is a new section that reads as
2 follows:

3 Responsibility under prior law. No determination of
4 ability to pay or assessment made under prior law is
5 affected by the provisions of this act until the department
6 has reviewed the determination and assessment in accordance
7 with the provisions of this act. The department shall make
8 the review no later than January 1, 1978 WITHIN 1 YEAR FROM
9 THE EFFECTIVE DATE OF RULES MADE UNDER THIS ACT FOR ABILITY
10 TO PAY DETERMINATIONS AND ASSESSMENTS.

11 Section 8. ~~Section 38-210, R.C.M. 1947, is amended to~~
12 ~~read as follows:~~

13 ~~"38-210. Money of insane seriously mentally ill~~
14 ~~person --- disposal handling of. When a person is adjudged~~
15 ~~insane and ordered committed to the state hospital or is~~
16 ~~adjudged to be in such a condition of mind that he should be~~
17 ~~placed in the state hospital for observation, the money~~
18 ~~found on him at the time he is taken into custody must be~~
19 ~~certified to by the judge and sent with the person to the~~
20 ~~state hospital. The money must be delivered to the~~
21 ~~superintendent of the state hospital whose receipt for the~~
22 ~~money shall be taken by the officer or other person~~
23 ~~delivering him to the hospital who must file the receipt~~
24 ~~with the clerk of the district court of the county in which~~
25 ~~the proceedings were held. If the amount exceeds one hundred~~

1 ~~dollars (\$100), the excess must be applied to the payment of~~
2 ~~the expenses of the person while in the hospital. If the~~
3 ~~amount is one hundred dollars (\$100) or less it must be kept~~
4 ~~and delivered to the person when discharged or released from~~
5 ~~the hospital or applied in payment of funeral expenses if~~
6 ~~the person dies while in the hospital. If an amount remains~~
7 ~~to the credit of a person paroled, discharged, or released~~
8 ~~or after payment of the funeral expenses of the person who~~
9 ~~dies while in the hospital and the amount remains unclaimed~~
10 ~~for one (1) year after the parole, discharge, release, or~~
11 ~~death, fifty per cent (50%) of the amount, but not in any~~
12 ~~event exceeding fifty dollars (\$50) shall be withdrawn from~~
13 ~~the account and placed in the agency fund in the state~~
14 ~~treasury to be expended for indigent patients at the times~~
15 ~~and in the manner and for such purposes as may be prescribed~~
16 ~~by the superintendent of the hospital. A balance which~~
17 ~~remains to the credit of the person shall be transmitted to~~
18 ~~the county treasurer of the county from which the person was~~
19 ~~sent, and if a sum remains after paying the costs of~~
20 ~~hearing and transportation to the hospital, the balance~~
21 ~~shall be paid into the state treasury to the credit of the~~
22 ~~general fund. When any person is committed to a mental~~
23 ~~health facility under the provisions of Title 38, Chapter~~
24 ~~13, the money found on him at the time he is taken into~~
25 ~~custody must be handled according to other provisions of~~

1 ~~Montana law applicable to the handling of money of persons~~
 2 ~~committed to a mental health facility."~~

3 Section 8. Section 10-1238, R.C.M. 1947, is amended to
 4 read as follows:

5 *10-1238. Support of youth committed to a custodial
 6 agency. When a youth under this act is committed by the
 7 court to custody other than that of its parents, and no
 8 provision is otherwise made by law for the support of such
 9 youth, compensation for the care of such youth, when
 10 approved by order of the court, shall be a charge upon the
 11 county, or the appropriate division thereof. But the court
 12 may, after giving the parent a reasonable opportunity to be
 13 heard, adjudge and order that such parent shall pay in such
 14 manner as the court may direct, such sum as will cover, in
 15 whole or in part, the support of such youth, provided,
 16 however--that--such--sum--shall--not--exceed--the--cost--of
 17 reasonable---care--of--a--normal--youth--at--home--and, In
 18 determining the amount the parents must pay, the court shall
 19 use the standards set out in Title 80, chapter 16, and the
 20 department of institution's rules governing payment for care
 21 of residents of institutions, as those provisions and rules
 22 apply to the youth and parents before the court, if If such
 23 parent shall willfully fail or refuse to pay such sum, he
 24 may be proceeded against as provided by law for cases of
 25 desertion or failure to provide subsistence, or said cost

1 may be collected in a civil action against the parent or
 2 parents."

3 ~~Section 9--Section 10-1249, R.C.M. 1947, is amended to~~
 4 ~~read as follows:~~

5 ~~*10-1249. Per diem charge to financially able parents.~~
 6 ~~A youth court judge placing a delinquent youth or a youth in~~
 7 ~~need of supervision in a district youth guidance home may~~
 8 ~~if the parent or parents of the youth are financially able,~~
 9 ~~without undue hardship, require the parents or parent to pay~~
 10 ~~to the district youth guidance home a per diem charge not to~~
 11 ~~exceed the per diem charge established by the department of~~
 12 ~~institutions for each youth placed in the Montana children's~~
 13 ~~center under the standards set out in Title 80, chapter 16~~
 14 ~~and the department of institution's rules governing payments~~
 15 ~~for care of residents of institutions, as those provisions~~
 16 ~~and rules apply to the youth and parent or parents before~~
 17 ~~the court."~~

18 SECTION 9. SECTION 15, CHAPTER 100, LAWS OF 1977, IS
 19 AMENDED TO READ AS FOLLOWS:

20 Section 15. Section 10-1249, R.C.M. 1947, is amended
 21 to read as follows:

22 *10-1249. Per diem charge to financially able parents.
 23 A youth court judge placing a delinquent youth or a youth in
 24 need of supervision in a district youth guidance home may
 25 if--the--parent--or--parents--of--the--youth--are--financially--able

1 ~~without-undue-hardship,~~ require the parents or parent to pay
2 to the district youth guidance home such a per diem charge
3 ~~as--the--judge--may--determine,~~ under the standards set out in
4 Title 80, chapter 16, and the department of institution's
5 rules governing payments for care of residents of
6 institutions, as those provisions and rules apply to the
7 youth and parent or parents before the court."

8 Section 10. Saving clause. This act does not affect
9 rights and duties that matured, penalties that were
10 incurred, or proceedings than were begun before the
11 effective date of this act.

12 Section 11. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

18 SECTION 12. REPEALER. SECTION 38-210, R.C.M. 1947, IS
19 REPEALED.

20 Section 13. Effective date. This act is effective on
21 its passage and approval.

-End-