

HOUSE BILL 684

Introduced by Menahan

3/16	Introduced
3/16	Referred to Appropriations
3/16	First Reading
3/16	Fiscal Note Requested
3/22	Fiscal Note Received
3/22	Fiscal Note Printed
3/26	Missed Transmittal Deadline

1 House BILL NO. 684
2 INTRODUCED BY Menahan
3 BY REQUEST OF THE HOUSE APPROPRIATIONS COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MENTAL
6 DISABILITIES BOARD OF VISITORS; AMENDING SECTIONS 5-11-210,
7 46-14-221, 50-5-101, 53-20-102, 53-20-146, 53-20-147,
8 53-20-161, 53-20-163, 53-21-102, 53-21-106, 53-21-138,
9 53-21-142, 53-21-147, 53-21-163, 53-21-166, AND 53-21-212,
10 MCA; REPEALING SECTIONS 2-15-211, 53-20-104, AND 53-21-104,
11 MCA; AND PROVIDING AN EFFECTIVE DATE."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 **Section 1.** Section 5-11-210, MCA, is amended to read:
15 "5-11-210. Clearinghouse for reports to legislature.
16 (1) For the purposes of this section, "report" means:
17 (a) a document required to be prepared for the
18 legislature as required in any of the sections listed in
19 subsection (10); and
20 (b) unless otherwise provided by law, any other report
21 required by law to be given to or filed with the
22 legislature.
23 (2) On or before September 1 of each year preceding the
24 convening of a regular session of the legislature, an entity
25 required to report to the legislature shall provide, in

1 writing, to the executive director of the legislative
2 council:
3 (a) the final title of the report;
4 (b) an abstract or description of the contents of the
5 report, not to exceed one page;
6 (c) a recommendation on how many copies of the report
7 should be provided to the legislature;
8 (d) the reasons why the number of copies recommended
9 is, in the opinion of the reporting entity, the appropriate
10 number of copies;
11 (e) an estimated cost for each copy of the report; and
12 (f) the date on which the entity will deliver the
13 final, published copies of the report to the legislature.
14 (3) After considering all of the information available
15 about the report, including the number of legislators
16 requesting copies of the report pursuant to subsection (7),
17 the legislative council or the executive director shall, in
18 writing, direct the reporting entity to provide a specific
19 number of copies. The number of copies required is at the
20 sole discretion of the legislative council. The legislative
21 council or the executive director may require the reporting
22 entity to mail the copies of the report.
23 (4) The legislative council may require that the report
24 be submitted in an electronic format useable on the
25 legislature's current computer hardware, in a microform,

such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), available from the legislative council. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during

the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as ~~he considers~~ considered necessary, and copies of the report may be discarded at ~~his~~ the executive director's discretion.

(10) (a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-7-203, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, ~~53-20-1047--53-21-1047~~, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.

(b) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the

1 Multistate Highway Transportation Agreement contained in
2 61-10-1101, or the Western Interstate Nuclear Compact
3 contained in 90-5-201."

4 **Section 2.** Section 46-14-221, MCA, is amended to read:

5 "46-14-221. Determination of fitness to proceed --
6 effect of finding of unfitness -- expenses. (1) The issue of
7 the defendant's fitness to proceed may be raised by the
8 court, the defendant or the defendant's counsel, or by the
9 prosecutor. When the issue is raised, it must be determined
10 by the court. If neither the prosecutor nor counsel for the
11 defendant contests the finding of the report filed under
12 46-14-206, the court may make the determination on the basis
13 of the report. If the finding is contested, the court shall
14 hold a hearing on the issue. If the report is received in
15 evidence upon the hearing, the parties have the right to
16 subpoena and cross-examine the psychiatrists or licensed
17 clinical psychologists who joined in the report and to offer
18 evidence upon the issue.

19 (2) If the court determines that the defendant lacks
20 fitness to proceed, the proceeding against the defendant
21 must be suspended, except as provided in subsection (4), and
22 the court shall commit the defendant to the custody of the
23 director of the department of corrections and human services
24 to be placed in an appropriate institution of the department
25 of corrections and human services for so long as the

1 unfitness endures. The committing court shall, within 90
2 days of commitment, review the defendant's fitness to
3 proceed. If the court finds that the defendant is still
4 unfit to proceed and that it does not appear that the
5 defendant will become fit to proceed within the reasonably
6 foreseeable future, the proceeding against the defendant
7 must be dismissed, except as provided in subsection (4), and
8 the prosecutor shall petition the court in the manner
9 provided in chapter 20 or 21 of Title 53, whichever is
10 appropriate, to determine the disposition of the defendant
11 pursuant to those provisions.

12 (3) If the court determines that the defendant lacks
13 fitness to proceed because the defendant is developmentally
14 disabled as provided in 53-20-102(4), the proceeding against
15 the defendant must be dismissed and the prosecutor shall
16 petition the court in the manner provided in chapter 20 of
17 Title 53.

18 (4) The fact that the defendant is unfit to proceed
19 does not preclude any legal objection to the prosecution
20 that is susceptible to fair determination prior to trial and
21 without the personal participation of the defendant.

22 (5) The expenses of sending the defendant to the
23 custody of the director of the department of corrections and
24 human services to be placed in an appropriate institution of
25 the department of corrections and human services, of keeping

the defendant there, and of bringing the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Section 3. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such the facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

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

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

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

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the

preceding batching period.

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

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

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would

substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof of erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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

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

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment

1 centers, long-term care facilities, medical assistance
2 facilities, mental health centers, outpatient facilities,
3 public health centers, rehabilitation facilities,
4 residential treatment facilities, and adult day-care
5 centers.

6 (20) "Health maintenance organization" means a public or
7 private organization which provides or arranges for health
8 care services to enrollees on a prepaid or other financial
9 basis, either directly through provider employees or through
10 contractual or other arrangements with a provider or group
11 of providers.

12 (21) "Home health agency" means a public agency or
13 private organization or subdivision thereof--which of an
14 agency or organization that is engaged in providing home
15 health services to individuals in the places where they
16 live. Home health services must include the services of a
17 licensed registered nurse and at least one other therapeutic
18 service and may include additional support services.

19 (22) "Hospice" means a coordinated program of home and
20 inpatient health care that provides or coordinates
21 palliative and supportive care to meet the needs of a
22 terminally ill patient and ~~his~~ the patient's family arising
23 out of physical, psychological, spiritual, social, and
24 economic stresses experienced during the final stages of
25 illness and dying and that includes formal bereavement

1 programs as an essential component.

2 (23) "Hospital" means a facility providing, by or under
3 the supervision of licensed physicians, services for medical
4 diagnosis, treatment, rehabilitation, and care of injured,
5 disabled, or sick persons. Services provided may or may not
6 include obstetrical care, emergency care, or any other
7 service as allowed by state licensing authority. A hospital
8 has an organized medical staff which is on call and
9 available within 20 minutes, 24 hours per day, 7 days per
10 week, and provides 24-hour nursing care by licensed
11 registered nurses. This term includes hospitals specializing
12 in providing health services for psychiatric, mentally
13 retarded, and tubercular patients.

14 (24) "Infirmiry" means a facility located in a
15 university, college, government institution, or industry for
16 the treatment of the sick or injured, with the following
17 subdefinitions:

18 (a) an "infirmiry--A" provides outpatient and inpatient
19 care;

20 (b) an "infirmiry--B" provides outpatient care only.

21 (25) "Joint commission on accreditation of hospitals"
22 means the organization nationally recognized by that name
23 with headquarters in Chicago, Illinois, that surveys health
24 care facilities upon their requests and grants accreditation
25 status to any health care facility that it finds meets its

standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof--which of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

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

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

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road

1 miles from the nearest hospital.

2 (30) "Mental health center" means a facility providing
3 services for the prevention or diagnosis of mental illness,
4 the care and treatment of mentally ill patients or the
5 rehabilitation of such mentally ill persons, or any
6 combination of these services.

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

10 (32) "Observation bed" means a bed occupied for not more
11 than 6 hours by a patient recovering from surgery or other
12 treatment.

13 (33) "Offer" means the holding out by a health care
14 facility that it can provide specific health services.

15 (34) "Outpatient facility" means a facility, located in
16 or apart from a hospital, providing, under the direction of
17 a licensed physician, either diagnosis or treatment, or
18 both, to ambulatory patients in need of medical, surgical,
19 or mental care. An outpatient facility may have observation
20 beds.

21 (35) "Patient" means an individual obtaining services,
22 including skilled nursing care, from a health care facility.

23 (36) "Person" means any individual, firm, partnership,
24 association, organization, agency, institution, corporation,
25 trust, estate, or governmental unit, whether organized for

1 profit or not.

2 (37) "Public health center" means a publicly owned
3 facility providing health services, including laboratories,
4 clinics, and administrative offices.

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

13 (39) "Resident" means a person who is in a long-term
14 care facility for intermediate or personal care.

15 (40) "Residential psychiatric care" means active
16 psychiatric treatment provided in a residential treatment
17 facility to psychiatrically impaired individuals with
18 persistent patterns of emotional, psychological, or
19 behavioral dysfunction of such severity as to require
20 24-hour supervised care to adequately treat or remedy the
21 individual's condition. Residential psychiatric care must be
22 individualized and designed to achieve the patient's
23 discharge to less restrictive levels of care at the earliest
24 possible time.

25 (41) "Residential treatment facility" means a facility

1 operated for the primary purpose of providing residential
2 psychiatric care to persons under 21 years of age.

3 (42) "State health plan" means the plan prepared by the
4 department to project the need for health care facilities
5 within Montana and approved by the statewide health
6 coordinating council and the governor."

7 **Section 4.** Section 53-20-102, MCA, is amended to read:

8 "53-20-102. (Temporary) Definitions. As used in this
9 part, the following definitions apply:

10 ~~{1}-"Board"-or-"mental-disabilities-board-of-visitors"~~
11 ~~means--the--mental-disabilities-board-of-visitors-created-by~~
12 ~~2-15-211-~~

13 {2}{1} "Community-based facilities" or "community-based
14 services" includes those services and facilities which are
15 available for the evaluation, treatment, and habilitation of
16 the developmentally disabled in a community setting,
17 including but not limited to outpatient facilities, special
18 education services, group homes, foster homes, day-care
19 facilities, sheltered workshops, and other community-based
20 services and facilities.

21 {3}{2} "Court" means a district court of the state of
22 Montana.

23 {4}{3} "Developmentally disabled" means suffering from
24 a disability attributable to mental retardation, cerebral
25 palsy, epilepsy, autism, or any other neurologically

1 handicapping condition closely related to mental retardation
2 and requiring treatment similar to that required by mentally
3 retarded individuals if the disability originated before the
4 individual attained age 18, has continued or can be expected
5 to continue indefinitely, and constitutes a substantial
6 handicap of such the individual.

7 {5}{4} "Habilitation" means the process by which a
8 person who is developmentally disabled is assisted to
9 acquire and maintain those life skills which that enable him
10 the person to cope more effectively with self-demands and
11 the demands of his-own-person-and the person's environment
12 and to raise the level of his the person's physical, mental,
13 and social efficiency. Habilitation includes but is not
14 limited to formal, structured education and treatment.

15 {6}{5} "Individual treatment planning team" means the
16 interdisciplinary team of persons involved in and
17 responsible for the habilitation of a person committed to a
18 residential facility. The committed person is a member of
19 the team.

20 {7}{6} "Next of kin" includes but need not be limited
21 to the spouse, parents, adult children, and adult brothers
22 and sisters of a person.

23 {8}{7} "Professional person" means a licensed
24 psychologist, licensed psychiatrist, or a person with a
25 master's degree in psychology, who:

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

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

5 (c) is certified as provided for in 53-20-106 by the
6 department of social and rehabilitation services and the
7 department of corrections and human services.

8 ~~(9)~~(8) "Qualified mental retardation professional"
9 means a person who has at least 1 year of experience working
10 directly with persons with mental retardation or other
11 developmental disabilities and who is:

12 (a) a licensed physician or osteopath;

13 (b) a registered nurse; or

14 (c) a professional program staff person for the
15 residential facility who the department of corrections and
16 human services determines meets the professional
17 requirements necessary for federal certification of the
18 facility.

19 ~~(10)~~(9) "Resident" means a person admitted to a
20 residential facility for a course of evaluation, treatment,
21 or habilitation.

22 ~~(11)~~(10) "Residential facility" or "facility" means the
23 Montana developmental center and the Eastmont human services
24 center.

25 ~~(12)~~(11) "Residential facility screening team" means a

1 team of persons appointed as provided in 53-20-133.

2 ~~(13)~~(12) "Respondent" means a person alleged in a
3 petition filed pursuant to this part to be developmentally
4 disabled and in need of developmental disability services.

5 ~~(14)~~(13) "Responsible person" means any person willing
6 and able to assume responsibility for a person who is
7 developmentally disabled or alleged to be developmentally
8 disabled.

9 ~~(15)~~(14) "Seriously developmentally disabled" means a
10 person who:

11 (a) is developmentally disabled;

12 (b) is impaired in cognitive functioning; and

13 (c) has behaviors that pose an imminent risk of serious
14 harm to self or others or self-help deficits so severe as to
15 require total care or near total care and because of those
16 behaviors or deficits, cannot be safely and effectively
17 habilitated in community-based services. (Terminates
18 September 30, 1995--sec. 27, Ch. 381. L. 1991.)

19 53-20-102. (Effective October 1, 1995) Definitions. As
20 used in this part, the following definitions apply:

21 ~~(1)~~--"Board" or "mental disabilities board of visitors"
22 means--the--mental disabilities board of visitors created by
23 2-15-211-

24 ~~(2)~~(1) "Community-based facilities" or "community-based
25 services" includes those services and facilities which are

1 available for the evaluation, treatment, and habilitation of
 2 the developmentally disabled in a community setting,
 3 including but not limited to outpatient facilities, special
 4 education services, group homes, foster homes, day-care
 5 facilities, sheltered workshops, and other community-based
 6 services and facilities.

7 †3†(2) "Court" means a district court of the state of
 8 Montana.

9 †4†(3) "Developmentally disabled" means suffering from
 10 a disability attributable to mental retardation, cerebral
 11 palsy, epilepsy, autism, or any other neurologically
 12 handicapping condition closely related to mental retardation
 13 and requiring treatment similar to that required by mentally
 14 retarded individuals if the disability originated before the
 15 individual attained age 18, has continued or can be expected
 16 to continue indefinitely, and constitutes a substantial
 17 handicap of such the individual.

18 †5†(4) "Habilitation" means the process by which a
 19 person who is developmentally disabled is assisted to
 20 acquire and maintain those life skills which that enable him
 21 the person to cope more effectively with self-demands and
 22 the demands of his-own-person-and the person's environment
 23 and to raise the level of his the person's physical, mental,
 24 and social efficiency. Habilitation includes but is not
 25 limited to formal, structured education and treatment.

1 †6†(5) "Individual treatment planning team" means the
 2 interdisciplinary team of persons involved in and
 3 responsible for the habilitation of a person committed to a
 4 residential facility. The committed person is a member of
 5 the team.

6 †7†(6) "Next of kin" includes but need not be limited
 7 to the spouse, parents, adult children, and adult brothers
 8 and sisters of a person.

9 †8†(7) "Professional person" means a licensed
 10 psychologist, licensed psychiatrist, or a person with a
 11 master's degree in psychology, who:

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

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

16 (c) is certified as provided for in 53-20-106 by the
 17 department of social and rehabilitation services and the
 18 department of corrections and human services.

19 †9†(8) "Qualified mental retardation professional"
 20 means a person who has at least 1 year of experience working
 21 directly with persons with mental retardation or other
 22 developmental disabilities and who is:

23 (a) a licensed physician or osteopath;

24 (b) a registered nurse; or

25 (c) a professional program staff person for the

1 residential facility who the department of corrections and
 2 human services determines meets the professional
 3 requirements necessary for federal certification of the
 4 facility.

5 ~~(10)~~(9) "Resident" means a person admitted to a
 6 residential facility for a course of evaluation, treatment,
 7 or habilitation.

8 ~~(11)~~(10) "Residential facility" or "facility" means the
 9 Montana developmental center and the Eastmont human services
 10 center.

11 ~~(12)~~(11) "Residential facility screening team" means a
 12 team of persons appointed as provided in 53-20-133.

13 ~~(13)~~(12) "Respondent" means a person alleged in a
 14 petition filed pursuant to this part to be developmentally
 15 disabled and in need of developmental disability services.

16 ~~(14)~~(13) "Responsible person" means any person willing
 17 and able to assume responsibility for a person who is
 18 developmentally disabled or alleged to be developmentally
 19 disabled.

20 ~~(15)~~(14) "Seriously developmentally disabled" means
 21 developmentally disabled due to developmental or physical
 22 disability or a combination of both, rendering a person
 23 unable to function in a community-based setting and which
 24 has resulted in self-inflicted injury or injury to others or
 25 the imminent threat ~~thereof~~ of injury or which has deprived

1 the person afflicted of the ability to protect ~~his~~ the
 2 person's life or health."

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

4 "53-20-146. Right not to be subjected to certain
 5 treatment procedures. (1) Residents of a residential
 6 facility have a right not to be subjected to any unusual or
 7 hazardous treatment procedures without the express and
 8 informed consent of the resident, if the resident is able to
 9 give consent, and of ~~his~~ the resident's parents or guardian
 10 or the responsible person appointed by the court after
 11 opportunities for consultation with independent specialists
 12 and legal counsel. ~~Such-proposed-procedures-must-first--have~~
 13 ~~been--reviewed-and-approved-by-the-mental-disabilities-board~~
 14 ~~of-visitors-before-consent-is-sought.~~

15 (2) Physical restraint may be employed only when
 16 absolutely necessary to protect the resident from ~~injury-to~~
 17 ~~himself~~ self-injury or to prevent injury to others.
 18 Mechanical supports used to achieve proper body position and
 19 balance that are ordered by a physician are not considered a
 20 physical restraint. Restraint may not be employed as
 21 punishment, for the convenience of staff, or as a substitute
 22 for a habilitation program. Restraint may be applied only if
 23 alternative techniques have failed and only if the restraint
 24 imposes the least possible restriction consistent with its
 25 purpose. Use of restraints may be authorized by a physician,

professional person, or qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the person restrained.

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

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

(5) A resident may not be subjected to a behavior

modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such the behavior modifications serve only institutional convenience.

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

Section 6. Section 53-20-147, MCA, is amended to read:

"53-20-147. Right not to be subjected to experimental research. (1) Residents of a residential facility ~~shall~~ have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) ~~Such---proposed---research---shall---first---have---been reviewed-and-approved-by-the-mental-disabilities-board-of~~

~~visitors--before-such-consent-shall-be-sought--Prior-to-such~~
~~approval--the-board-shall-determine-that-such~~ The research
~~complies must comply~~ with the principles of the statement on
the use of human subjects for research of the American
association on mental deficiency and with the principles for
research involving human subjects required by the United
States department of health, education, and welfare for
projects supported by that agency."

Section 7. Section 53-20-161, MCA, is amended to read:

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

(a) the court;

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

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

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

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

(f) the superintendent of the residential facility or
~~his~~ the superintendent's designee as custodian of a resident
over the age of majority who is incapable of giving informed
consent and for whom no legal guardian has been appointed;

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

(h) the superintendent of the residential facility or
~~his~~ the superintendent's designee as custodian of a resident
of that facility whenever release is required by federal or
state law or department of social and rehabilitation
services rules.

(2) Information may not be released by a superintendent

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

21 (3) These records must include:

- 22 (a) identification data, including the resident's legal
- 23 status;
- 24 (b) the resident's history, including but not limited
- 25 to:

- 1 (i) family data, educational background, and employment
- 2 record;
- 3 (ii) prior medical history, both physical and mental,
- 4 including prior institutionalization;
- 5 (c) the resident's grievances, if any;
- 6 (d) an inventory of the resident's life skills,
- 7 including mode of communication;
- 8 (e) a record of each physical examination that
- 9 describes the results of the examination;
- 10 (f) a copy of the individual habilitation plan and any
- 11 modifications thereto to the plan and an appropriate summary
- 12 that will guide and assist the resident care workers in
- 13 implementing the resident's program;
- 14 (g) the findings made in monthly reviews of the
- 15 habilitation plan, which findings must include an analysis
- 16 of the successes and failures of the habilitation program
- 17 and direct whatever modifications are necessary;
- 18 (h) a copy of the postinstitutionalization plan that
- 19 includes a statement of services needed in the community and
- 20 any modifications thereto to the plan and a summary of the
- 21 steps that have been taken to implement that plan;
- 22 (i) a medication history and status;
- 23 (j) a summary of each significant contact by a
- 24 professional person with a resident;
- 25 (k) a summary of the resident's response to his the

1 habilitation plan, prepared by a qualified mental
2 retardation professional involved in the resident's
3 habilitation and recorded at least monthly. Wherever
4 possible, such the response must be scientifically
5 documented.

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

9 (m) a signed order by a qualified mental retardation
10 professional, professional person, or physician for any
11 physical restraints;

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

18 (o) a summary of family visits and contacts;

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

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

23 **Section 8.** Section 53-20-163, MCA, is amended to read:

24 "53-20-163. Abuse of residents prohibited. (1) Every
25 residential facility shall prohibit mistreatment, neglect,

1 or abuse in any form of any resident. Alleged violations
2 must be reported immediately to the superintendent of the
3 facility, and there must be a written record that:

4 (a) each alleged violation has been thoroughly
5 investigated and findings stated;

6 (b) the results of the preliminary investigation are
7 reported to the superintendent of the facility within 24
8 hours of the report of the incident.

9 (2) ~~The reports must also be made to the mental~~
10 ~~disabilities board of visitors monthly.~~ Each facility shall
11 cause a written statement of this policy to be posted in
12 each cottage and building and circulated to all staff
13 members."

14 **Section 9.** Section 53-21-102, MCA, is amended to read:

15 "53-21-102. (Temporary) Definitions. As used in this
16 part, the following definitions apply:

17 ~~{1} "Board" or "mental disabilities board of visitors"~~
18 ~~means the mental disabilities board of visitors created by~~
19 ~~2-15-211.~~

20 ~~{2}~~(1) "Court" means any district court of the state of
21 Montana.

22 ~~{3}~~(2) "Department" means the department of corrections
23 and human services provided for in Title 2, chapter 15, part
24 23.

25 ~~{4}~~(3) "Emergency situation" means a situation in which

any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

{5}(4) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

{6}(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

{7}(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with

mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

{8}(7) "Mentally ill" means suffering from a mental disorder which that has not resulted in self-inflicted injury or injury to others or the imminent threat thereof of injury but which that:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical

1 history.

2 {9}(8) "Next of kin" shall include but need not be
3 limited to the spouse, parents, adult children, and adult
4 brothers and sisters of a person.

5 {10}(9) "Patient" means a person committed by the court
6 for treatment for any period of time or who is voluntarily
7 admitted for treatment for any period of time.

8 {11}(10) "Peace officer" means any sheriff, deputy
9 sheriff, marshal, policeman, or other peace officer.

10 {12}(11) "Professional person" means:

11 (a) a medical doctor; or

12 (b) a person who has been certified, as provided for in
13 53-21-106, by the department.

14 {13}(12) "Reasonable medical certainty" means reasonable
15 certainty as judged by the standards of a professional
16 person.

17 {14}(13) "Respondent" means a person alleged in a
18 petition filed pursuant to this part to be mentally ill or
19 seriously mentally ill.

20 {15}(14) "Seriously mentally ill" means suffering from a
21 mental disorder which that has resulted in self-inflicted
22 injury or injury to others or the imminent threat thereof of
23 injury or which that has deprived the person afflicted of
24 the ability to protect his the person's life or health. For
25 this purpose, injury means physical injury. No A person may

1 not be involuntarily committed to a mental health facility
2 or detained for evaluation and treatment because he the
3 person is an epileptic or is mentally deficient, mentally
4 retarded, senile, or suffering from a mental disorder unless
5 the condition causes him the person to be seriously mentally
6 ill within the meaning of this part.

7 {16}(15) "State hospital" means the Montana state
8 hospital. (Terminates July 1, 1997--sec. 1, Ch. 541, L.
9 1989.)

10 53-21-102. (Effective July 1, 1997) Definitions. As
11 used in this part, the following definitions apply:

12 {1}--"Board"--or--"mental-disabilities-board-of--visitors"
13 means--the--mental-disabilities-board-of-visitors-created-by
14 2-15-211-

15 {2}(1) "Court" means any district court of the state of
16 Montana.

17 {3}(2) "Department" means the department of corrections
18 and human services provided for in Title 2, chapter 15, part
19 23.

20 {4}(3) "Emergency situation" means a situation in which
21 any person is in imminent danger of death or serious bodily
22 harm from the activity of a person who appears to be
23 seriously mentally ill.

24 {5}(4) "Friend of respondent" means any person willing
25 and able to assist a seriously mentally ill person or person

1 alleged to be seriously mentally ill in dealing with legal
 2 proceedings, including consultation with legal counsel and
 3 others. The friend of respondent may be the next of kin, the
 4 person's conservator or legal guardian, if any,
 5 representatives of a charitable or religious organization,
 6 or any other person appointed by the court to perform the
 7 functions of a friend of respondent set out in this part.
 8 Only one person may at any one time be the friend of
 9 respondent within the meaning of this part. In appointing a
 10 friend of respondent, the court shall consider the
 11 preference of the respondent. The court may at any time, for
 12 good cause shown, change its designation of the friend of
 13 respondent.

14 ~~†6†~~(5) "Mental disorder" means any organic, mental, or
 15 emotional impairment which has substantial adverse effects
 16 on an individual's cognitive or volitional functions.

17 ~~†7†~~(6) "Mental health facility" or "facility" means a
 18 public hospital or a licensed private hospital which is
 19 equipped and staffed to provide treatment for persons with
 20 mental disorders or a community mental health center or any
 21 mental health clinic or treatment center approved by the
 22 department. No A correctional institution or facility or
 23 jail is not a mental health facility within the meaning of
 24 this part.

25 ~~†8†~~(7) "Next of kin" shall include but need not be

1 limited to the spouse, parents, adult children, and adult
 2 brothers and sisters of a person.

3 ~~†9†~~(8) "Patient" means a person committed by the court
 4 for treatment for any period of time or who is voluntarily
 5 admitted for treatment for any period of time.

6 ~~†10†~~(9) "Peace officer" means any sheriff, deputy
 7 sheriff, marshal, policeman, or other peace officer.

8 ~~†11†~~(10) "Professional person" means:

9 (a) a medical doctor; or

10 (b) a person who has been certified, as provided for in
 11 53-21-106, by the department.

12 ~~†12†~~(11) "Reasonable medical certainty" means reasonable
 13 certainty as judged by the standards of a professional
 14 person.

15 ~~†13†~~(12) "Respondent" means a person alleged in a
 16 petition filed pursuant to this part to be seriously
 17 mentally ill.

18 ~~†14†~~(13) "Seriously mentally ill" means suffering from a
 19 mental disorder which that has resulted in self-inflicted
 20 injury or injury to others or the imminent threat thereof of
 21 injury or which that has deprived the person afflicted of
 22 the ability to protect his the person's life or health. For
 23 this purpose, injury means physical injury. No A person may
 24 not be involuntarily committed to a mental health facility
 25 or detained for evaluation and treatment because he the

person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him the person to be seriously mentally ill within the meaning of this part.

~~(15)~~(14) "State hospital" means the Montana state hospital."

Section 10. Section 53-21-106, MCA, is amended to read:

"53-21-106. (Temporary) Certification of professional persons. (1) The department shall certify professional persons, as defined in 53-21-102, for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental

health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-106. (Effective July 1, 1997) Certification of professional persons. (1) The department shall certify professional persons, other than medical doctors, as defined in 53-21-102~~(10)~~~~(b)~~ for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental

health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification."

Section 11. Section 53-21-138, MCA, is amended to read:

"53-21-138. (Effective July 1, 1993) Diversion of certain mentally ill persons from jail. (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be seriously mentally ill, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is seriously mentally ill, the sheriff or administrator of the jail shall:

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

(b) refer the inmate to the nearest community mental health center, as defined in ~~53-21-212~~ 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a

nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace."

Section 12. Section 53-21-142, MCA, is amended to read:

"53-21-142. Rights of persons admitted to facility.

Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients shall have the same rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment

1 plan if any restrictions are to be continued. Patients shall
2 have an unrestricted right to visitation with attorneys,
3 with spiritual counselors, and with private physicians and
4 other professional persons.

5 (4) Patients shall have an unrestricted right to send
6 sealed mail. Patients shall have an unrestricted right to
7 receive sealed mail from their attorneys, private physicians
8 and other professional persons, ~~the--mental-disabilities~~
9 ~~board--of--visitors~~, courts, and government officials.
10 Patients shall have a right to receive sealed mail from
11 others except to the extent that a professional person
12 responsible for formulation of a particular patient's
13 treatment plan writes an order imposing special restrictions
14 on receipt of sealed mail. The written order must be renewed
15 after each periodic review of the treatment plan if any
16 restrictions are to be continued.

17 (5) Patients have an unrestricted right to have access
18 to letter-writing materials, including postage, and have a
19 right to have staff members of the facility assist persons
20 who are unable to write, prepare, and mail correspondence.

21 (6) Patients have a right to wear their own clothes and
22 to keep and use their own personal possessions, including
23 toilet articles, except insofar as ~~such~~ the clothes or
24 personal possessions may be determined by a professional
25 person in charge of the patient's treatment plan to be

1 dangerous or otherwise inappropriate to the treatment
2 regimen. The facility has an obligation to supply an
3 adequate allowance of clothing to any patients who do not
4 have suitable clothing of their own. Patients shall have the
5 opportunity to select from various types of neat, clean, and
6 seasonable clothing. ~~Such~~ The clothing ~~shall~~ must be
7 considered the patient's throughout ~~his~~ the patient's stay
8 at the facility. The facility shall make provision for the
9 laundering of patient clothing.

10 (7) Patients have the right to keep and be allowed to
11 spend a reasonable sum of their own money.

12 (8) Patients have the right to religious worship.
13 Provisions for ~~such~~ worship ~~shall~~ must be made available to
14 all patients on a nondiscriminatory basis. ~~No~~ An individual
15 ~~shall~~ may not be required to engage in any religious
16 activities.

17 (9) Patients have a right to regular physical exercise
18 several times a week. Moreover, it ~~shall-be~~ is the duty of
19 the facility to provide facilities and equipment for ~~such~~
20 exercise. Patients have a right to be outdoors at regular
21 and frequent intervals in the absence of contrary medical
22 considerations.

23 (10) Patients have the right to be provided, with
24 adequate supervision, suitable opportunities for interaction
25 with members of the opposite sex except to the extent that a

professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his the patient's medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions ~~shall~~ must be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet ~~shall~~ may not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities ~~shall~~ must be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities ~~shall~~ must be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the

accomplishment of this goal:

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

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision ~~shall~~ must be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility ~~shall~~ must be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet ~~such~~ the provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this

1 section at the time of his admission and periodically
2 thereafter after admission, in language and terms
3 appropriate to the patient's condition and ability to
4 understand;

5 (b) to assert grievances with respect to infringement
6 of the rights described in this section, including the right
7 to have a grievance considered in a fair and timely manner
8 according to an impartial grievance procedure that must be
9 provided for by the facility; and

10 (c) to exercise the rights described in this section
11 without reprisal and may not be denied admission to the
12 facility as reprisal for the exercise of the rights
13 described in this section.

14 (15) In order to assist a person admitted to a program
15 or facility in the exercise or protection of the patient's
16 rights, the patient's attorney, advocate, or legal
17 representatives shall have reasonable access to:

18 (a) the patient;

19 (b) the program or facility areas where the patient has
20 received treatment or has resided or the areas to which he
21 the patient has had access; and

22 (c) pursuant to the written authorization of the
23 patient, records and information pertaining to the patient's
24 diagnosis, treatment, and related services.

25 (16) A person admitted to a facility shall have access

1 to any available individual or service that provides
2 advocacy for the protection of the person's rights and that
3 assists the person in understanding, exercising, and
4 protecting his the person's rights as described in this
5 section.

6 (17) This section may not:

7 (a) obligate a professional person to administer
8 treatment contrary to the professional's clinical judgment;

9 (b) prevent a facility from discharging a patient for
10 whom appropriate treatment, consistent with the clinical
11 judgment of a professional person responsible for the
12 patient's treatment, is or has become impossible to
13 administer because of the patient's refusal to consent to
14 the treatment;

15 (c) require a facility to admit a person who has, on
16 prior occasions, repeatedly withheld consent to appropriate
17 treatment; or

18 (d) obligate a facility to treat a person admitted to
19 the facility solely for diagnostic evaluation."

20 **Section 13.** Section 53-21-147, MCA, is amended to read:

21 **"53-21-147.** Right not to be subjected to experimental
22 research. (1) Patients ~~shall~~ have a right not to be
23 subjected to experimental research without the express and
24 informed consent of the patient, if the patient is able to
25 give such consent, and of his the patient's guardian, if

1 any, and the friend of respondent appointed by the court
 2 after opportunities for consultation with independent
 3 specialists and with legal counsel. If there is no friend of
 4 respondent or if the friend of respondent appointed by the
 5 court is no longer available, then a friend of respondent
 6 who is in no way connected with the facility, the
 7 department, or the research project ~~shall~~ must be appointed
 8 prior to the involvement of the patient in any experimental
 9 research. At least 10 days prior to the commencement of such
 10 the experimental research, the facility shall send notice of
 11 intent to involve the patient in experimental research to
 12 the patient, his the patient's next of kin, if known, his
 13 the patient's legal guardian, if any, the attorney who most
 14 recently represented him the patient, and the friend of
 15 respondent appointed by the court.

16 (2) ~~Such--proposed--research--shall--first--have---been~~
 17 ~~reviewed--and--approved--by--the--mental-disabilities-board-of~~
 18 ~~visitors--before--such--consent--shall--be--sought--Prior-to--such~~
 19 ~~approval,--the--board--shall--determine--that--such~~ The research
 20 complies must comply with the principles of the statement on
 21 the use of human subjects for research of the American
 22 association on mental deficiency and with the principles for
 23 research involving human subjects required by the United
 24 States department of health, education, and welfare for
 25 projects supported by that agency.

1 (3) A patient has the right to appropriate protection
 2 before participating in an experimental treatment, including
 3 the right to a reasonable explanation of the procedure to be
 4 followed, expected benefits, relative advantages, and the
 5 potential risks and discomforts of any experimental
 6 treatment. A patient has the right to revoke at any time
 7 consent to an experimental treatment."

8 **Section 14.** Section 53-21-163, MCA, is amended to read:
 9 "53-21-163. **Examination following commitment.** No later
 10 than 30 days after a patient is committed to a mental health
 11 facility, the professional person in charge of the facility
 12 or his the person's appointed, professionally qualified
 13 agent shall reexamine the committed patient and shall
 14 determine whether he the patient continues to require
 15 commitment to the facility and whether a treatment plan
 16 complying with this part has been implemented. If the
 17 patient no longer requires commitment to the facility in
 18 accordance with the standards for commitment, he the patient
 19 must be released immediately unless he the patient agrees to
 20 continue with treatment on a voluntary basis. If for sound
 21 professional reasons a treatment plan has not been
 22 implemented, this fact ~~shall~~ must be reported immediately to
 23 the professional person in charge of the facility, the
 24 director of the department, ~~the-mental-disabilities-board-of~~
 25 ~~visitors~~, and the patient's counsel."

Section 15. Section 53-21-166, MCA, is amended to read:

"53-21-166. Records to be confidential -- exceptions.

All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part ~~shall be~~ are confidential and privileged matter and ~~shall must~~ remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his the recipient's guardian or conservator designates in writing persons to whom records or information may be disclosed, ~~such the~~ designation ~~shall--be~~ is valid in lieu of the designation by the recipient; except that ~~nothing-in~~ this section ~~shall may not~~ be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information ~~which that~~ has been given to ~~him the person~~ in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to

which ~~he~~ the recipient may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; ~~such the~~ rules ~~shall must~~ include but not be limited to the requirement that all researchers ~~must shall~~ sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

~~{7}--to-members-of--the--mental--disabilities--board--of--visitors--or--their--agents--when-necessary-to-perform-their--functions-as-set-out-in-53-21-104."~~

Section 16. Section 53-21-212, MCA, is amended to read:

"53-21-212. Definition. As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of health and environmental sciences provided for in 2-15-2101;

(2) the department of social and rehabilitation services provided for in 2-15-2201; and

(3) the department of corrections and human services provided for in 2-15-2301; ~~and~~

~~{4}--the--mental--disabilities--board--of--visitors--provided~~

1 ~~for-in-2-15-211.~~"

2 NEW SECTION. **Section 17.** Repealer. Sections 2-15-211,
3 53-20-104, and 53-21-104, MCA, are repealed.

4 NEW SECTION. **Section 18.** Effective date. [This act] is
5 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0684, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act eliminating the Mental Disabilities Board of Visitors.

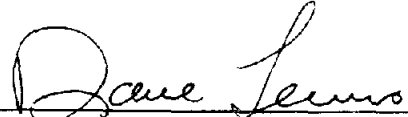
ASSUMPTIONS:Governor's Office:


1. The Mental Disabilities Board of Visitors currently provides legal counsel for approximately 250 cases per year at Montana State Hospital involving patients who are involuntarily committed. Should the Board not provide this counsel, the judge of the Third Judicial District Court has stated in writing that he would appoint private counsel to handle these cases. The fees charged by the private counsel would be billed back to the patient's county of residence (53-21-132, MCA). Based upon the current workload, it is estimated that there will be 250 commitment/recommitment hearings per year. Each case currently requires an average of five hours of legal staff time. The average hourly rate for private counsel is estimated to be \$90 based upon contracts processed by the State Legal Services Review Committee.
2. The Mental Disabilities Board of Visitors currently represents patients in guardianship hearings. If patients are not able to give informed consent to their treatment, a guardian must be appointed. The Board currently handles about 100 guardianship cases per year. If the Board did not provide this counsel, the Third Judicial District Court would appoint private counsel to handle these cases. The counsel would be paid by the Department of Corrections and Human Services. It is assumed that each guardianship hearing would require five hours of legal counsel at \$90 per hour.
3. The Mental Disabilities Board of Visitors currently is custodian (representative payee) of various patient funds (Caddell v Zanto) which are used to pay for patients' care and maintenance charges at Montana State Hospital. If a third party becomes custodian of these funds, \$25 per account per month (allowed by the Social Security Administration) which is currently deposited into the general fund would be retained by the third party resulting in a loss of general fund revenue.

Department of Corrections and Human Services:

4. It is estimated that 60 third party representative payees will be reimbursed for services each year. The loss of general fund revenue will be \$18,000 per year (60 x \$25 x 12).
5. If the county of residence of an individual requires the recommitment hearing to be held in the county in which the initial commitment occurred rather than where the institution is located, the department would incur additional expenses for transportation of the patient and professional staff to the hearing site. No estimate is included for these expenses since no data is available.
6. Estimated hearings include those related to both mental health and developmental disabilities patients.

(continued)

 3.22.93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


WILLIAM MENAHAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0684, as introduced

HB 684

ISCAL IMPACT: Governor's Office, Mental Disabilities Board of Visitors:

<u>Expenditures</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
TE	4.50	0.00	(4.50)	4.50	0.00	(4.50)
Personal Services	159,264	0	(159,264)	159,263	0	(159,263)
Operating Expenses	<u>39,938</u>	<u>0</u>	<u>(39,938)</u>	<u>42,456</u>	<u>0</u>	<u>(42,456)</u>
Total	199,202	0	(199,202)	201,719	0	(201,719)
<u>Funding</u>						
General Fund	144,765	0	(144,765)	147,063	0	(147,063)
Federal Special Revenue	<u>54,437</u>	<u>0</u>	<u>(54,437)</u>	<u>54,656</u>	<u>0</u>	<u>(54,656)</u>
Total	199,202	0	(199,202)	201,719	0	(201,719)

Department of Corrections and Human Services, Mental Health Program

<u>Expenditures</u>						
Personal Services	22,175,988	22,175,988	0	22,877,406	22,877,406	0
Operating Expenses	3,157,808	3,202,808	45,000	3,203,017	3,248,017	45,000
Equipment	93,126	93,126	0	93,126	93,126	0
Grants	7,281,075	7,281,075	0	7,281,075	7,281,075	0
Transfers	682,280	682,280	0	130,900	130,900	0
Debt Service	<u>1,705</u>	<u>1,705</u>	<u>0</u>	<u>1,705</u>	<u>1,705</u>	<u>0</u>
Total	33,391,982	33,436,982	45,000	33,587,229	33,632,229	45,000
<u>Funding</u>						
General Fund	31,257,136	31,302,136	45,000	32,052,383	32,097,383	45,000
State Special Revenue	172,670	172,670	0	172,670	172,670	0
Federal Special Revenue	<u>1,962,176</u>	<u>1,962,176</u>	<u>0</u>	<u>1,362,176</u>	<u>1,362,176</u>	<u>0</u>
Total	33,391,982	33,436,982	45,000	33,587,229	33,632,229	45,000

<u>Revenue</u>						
General Fund	669,398	651,398	(18,000)	689,480	671,480	(18,000)
Net Savings General Fund			81,765			84,063

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The county of residence of each patient would be billed for private counsel fees to represent patients at commitment and precommitment hearings. Total annual statewide costs are estimated to be \$112,500 (250 x 5 x \$90). Counties most affected would be Silver Bow, Lewis and Clark, Yellowstone, and Missoula.

HB 684