

SENATE BILL 414

Introduced by Kennedy

2/16	Introduced
2/16	Referred to Finance & Claims
2/16	First Reading
2/16	Fiscal Note Requested
2/18	Hearing
2/18	Tabled in Committee
2/23	Fiscal Note Received
2/23	Fiscal Note Printed

1 Senate BILL NO. 414
2 INTRODUCED BY Kennedy
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE AMENDMENT
5 OF RULE 46.12.590, ADMINISTRATIVE RULES OF MONTANA, TO
6 ELIMINATE CURRENT RESTRICTIONS DEFINING ELIGIBLE PROVIDERS
7 OF MEDICAID INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR
8 INDIVIDUALS UNDER 21 YEARS OF AGE; AND PROVIDING AN
9 EFFECTIVE DATE."

10
11 WHEREAS, 42 U.S.C. 1396d(a)(16) and (h) authorizes
12 Medicaid inpatient psychiatric hospital services for
13 individuals under 21 years of age; and

14 WHEREAS, 42 U.S.C. 1396d(h) specifically defines
15 inpatient psychiatric hospital services for individuals
16 under 21 years of age to include "inpatient services which
17 are provided in an institution (or distinct part thereof)
18 which is a psychiatric hospital" or in another inpatient
19 setting specified in federal regulations; and

20 WHEREAS, section 53-6-101, MCA, authorizes the Montana
21 Medicaid program to provide inpatient psychiatric hospital
22 services for individuals under 21 years of age; and

23 WHEREAS, Rule 46.12.590, Administrative Rules of
24 Montana, restricts the provision of inpatient psychiatric
25 hospital services for individuals under 21 years of age to

1 services provided in an inpatient hospital facility "whose
2 goals, purpose and care are designed for and devoted
3 exclusively to persons under the age of 21"; and

4 WHEREAS, this restriction contained in Rule 46.12.590,
5 Administrative Rules of Montana, is not provided for under
6 federal law or regulations that define eligibility for
7 providers of Medicaid inpatient psychiatric hospital
8 services for individuals under 21 years of age; and

9 WHEREAS, this restriction contained in Rule 46.12.590,
10 Administrative Rules of Montana, prevents the provision of
11 inpatient psychiatric care in licensed hospital facilities
12 in Montana that are not devoted exclusively to individuals
13 under 21 years of age; and

14 WHEREAS, many of these licensed hospital facilities
15 excluded under Rule 46.12.590, Administrative Rules of
16 Montana, from providing inpatient psychiatric hospital
17 services could provide services closer to a patient's home,
18 family, and friends.

19 THEREFORE, the Legislature finds it appropriate to
20 direct the amendment of Rule 46.12.590, Administrative Rules
21 of Montana, to eliminate current restrictions defining
22 eligible providers of Medicaid inpatient psychiatric
23 hospital services for individuals under 21 years of age.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** The Department of Social and Rehabilitation
2 Services shall amend Rule 46.12.590, Administrative Rules of
3 Montana, to read:

4 "46.12.590 INPATIENT PSYCHIATRIC SERVICES, PURPOSE AND
5 DEFINITIONS (1) The purpose of the following rules is to
6 define the basis and procedure the department will use to
7 pay for inpatient psychiatric services for individuals under
8 age 21. Facilities in which these services are available are
9 hereinafter referred to as providers.

10 (a) These rules implement Title XIX of the Social
11 Security Act and 42 CFR sections 447.1 through 447.45,
12 447.300 through 447.304 and 447.325, and allow the
13 department to pay for inpatient psychiatric hospital
14 services for persons under the age of 21 through the use of
15 rates that are reasonable and adequate to meet the costs
16 that must be incurred by efficiently and economically
17 operated facilities to provide services in conformity with
18 applicable Montana and federal laws, regulations, and
19 quality and safety standards. The department hereby adopts
20 and incorporates by reference 42 CFR sections 447.1 through
21 447.45, 447.300 through 447.304, and 447.325. Copies of
22 these federal regulations may be obtained from the
23 Department of Social and Rehabilitation Services, P.O. Box
24 4210, 111 Sanders, Helena, MT 59604-4210.

25 (2) As used in this subchapter, the following

1 definitions apply:

2 (a) "Inpatient psychiatric services" means services
3 that are provided in accordance with 42 CFR sections 440.160
4 and 441.150 through 441.156, which provide definitions and
5 program requirements and which the department hereby adopts
6 and incorporates by reference. A copy of the cited
7 regulations may be obtained through the Department of Social
8 and Rehabilitation Services, P.O. Box 4210, 111 Sanders,
9 Helena, MT 59604-4210. Inpatient psychiatric services are
10 services that meet those provisions and are provided in an
11 inpatient hospital facility or residential treatment
12 facility ~~that is devoted to the provision of psychiatric~~
13 ~~services for persons under the age of 21.~~

14 ~~(b) "Devoted to the provision of psychiatric services~~
15 ~~for persons under the age of 21" means a hospital facility~~
16 ~~or residential treatment facility whose goals, purpose and~~
17 ~~care are designed for and devoted exclusively to persons~~
18 ~~under the age of 21.~~

19 ~~(c) (b)~~ "Efficient and economic provision of services"
20 means providers that refuse to pay more than market price
21 for required services or items and also that seek to
22 minimize costs to the extent possible. Providers will be
23 considered to be operating efficiently if they can operate
24 within the maximum rate allowed under ARM 46.12.592.

25 ~~(d) (c)~~ "Owner" means any person, agency, corporation,

1 partnership or other entity which has an ownership interest,
2 including a leasehold or rental interest, in assets used to
3 provide services pursuant to an agreement with the
4 department.

5 ~~(e)~~(d) "Administrator" means the person, including an
6 owner, salaried employee, or other provider, with day-to-day
7 responsibility for the operation of the facility. In the
8 case of a facility with a central management group, the
9 administrator, for the purpose of this subchapter, may be
10 some person (other than the titled administrator of the
11 facility), with day-to-day responsibility for the facility.

12 ~~(f)~~(e) "Related parties" shall include the following:

13 (i) A person or entity shall be deemed a related party
14 to his spouse, ancestors, descendants, brothers and sisters,
15 or the spouses of any of the above, and also to any
16 corporation, partnership, estate, trust, or other entity in
17 which he or a related party has a substantial interest or in
18 which there is common ownership.

19 (ii) A substantial interest shall be deemed an interest
20 directly or indirectly, in excess of five percent (5%) of
21 the control, voting power, equity, or other beneficial
22 interest of the entity concerned.

23 (iii) Interests owned by a corporation, partnership,
24 estate, trust, or other entity shall be deemed as owned by
25 the stockholders, partners, or beneficiaries.

1 (iv) Control exists when a person or entity has the
2 power, directly or indirectly, whether legally enforceable
3 or not, to significantly influence or direct the actions or
4 policies of another person or entity, whether or not such
5 power is exercised.

6 (v) Common ownership exists when a person has
7 substantial interests in two or more providers or entities
8 serving providers.

9 ~~(g)~~(f) "Fiscal year" and "fiscal reporting period" both
10 mean the provider's federal internal revenue tax year.

11 ~~(h)~~(g) "Department audit staff" and "audit staff" mean
12 personnel directly employed by the department or any of the
13 department's contracted audit personnel or organizations.

14 ~~(i)~~(h) "Estimated economic life" means the estimated
15 remaining period during which the property is expected to be
16 economically usable by one or more users, with normal
17 repairs and maintenance, for the purpose for which it was
18 intended when built.

19 ~~(j)~~(i) "Rate year" means a 12-month period beginning
20 July 1.

21 ~~(k)~~(j) "Hospital inpatient psychiatric care" means
22 hospital based active psychiatric treatment provided under
23 the direction of a physician. The individual's psychiatric
24 condition must be of such a nature as to pose a significant
25 danger to self, others, or the public safety, or one which

1 has resulted in marked psychosocial dysfunction or grave
2 disability of the individual. The therapeutic intervention
3 or evaluation must be designed to achieve the patient's
4 discharge from inpatient hospital status to a less
5 restrictive environment at the earliest possible time.

6 (k) "Residential psychiatric care" means active
7 psychiatric treatment provided in a residential treatment
8 facility, to psychiatrically impaired individuals with
9 persistent patterns of emotional, psychological or
10 behavioral dysfunction of such severity as to require
11 twenty-four hour supervised care to adequately treat or
12 remediate their condition. Residential psychiatric care must
13 be individualized, and designed to achieve the patient's
14 discharge to less restrictive levels of care at the earliest
15 possible time.

16 (l) "Inpatient hospital facility" means a hospital
17 facility whose goals, purpose and care are designed for and
18 devoted exclusively that meets the requirements of 42 CFR
19 section 440.160 to provide inpatient psychiatric services to
20 persons under the age of 21.

21 (m) "Residential treatment facility" means a
22 facility operated for the primary purpose of providing
23 residential psychiatric care to persons under 21 years of
24 age.

25 (n) Payment for inpatient psychiatric services

1 provided outside the state of Montana is subject to the
2 requirements of ARM 46.12.502(3).

3 (o) "Emergency admission" means an admission for
4 treatment of a sudden onset of a psychiatric condition
5 manifesting itself by acute symptoms of such severity that
6 the absence of immediate medical attention could reasonably
7 be expected to result in serious dysfunction of a bodily
8 organ or part or in the death of the individual or in harm
9 to another person by the individual.

10 (p) "Working day" means any day Monday through
11 Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays.

12 (q) "Disproportionate share hospital" means a
13 hospital, including a psychiatric inpatient hospital
14 facility, which meets the following criteria:

15 (i) it has a medicaid inpatient utilization rate of at
16 least one standard deviation above the mean medicaid
17 inpatient utilization rate for all hospitals receiving
18 medicaid payments in the state, or a low income utilization
19 rate exceeding 25 percent;

20 (ii) urban hospitals must have at least two
21 obstetricians with staff privileges who have agreed to
22 provide obstetric services to medicaid patients. Rural
23 hospitals must have at least two physicians with staff
24 privileges to perform non-emergent obstetric procedures who
25 have agreed to provide obstetric services to medicaid

1 recipients; and

2 (iii) subsection (ii) does not apply to hospitals which:

3 (A) serve inpatients who are predominantly individuals
4 under 18 years of age; or

5 (B) do not offer non-emergent obstetric services as of
6 December 21, 1987.

7 ~~(s)~~(r) "Medicaid inpatient utilization rate" means the
8 hospital's percentage rate computed by dividing the total
9 number of medicaid inpatient days in the hospital's fiscal
10 year by the total number of the hospital's inpatient days in
11 that same period. The period used will be the most recent
12 calendar year for which final cost reports are available for
13 all hospital providers, including psychiatric inpatient
14 hospital facilities.

15 ~~(t)~~(s) "Low income utilization rate" is the percentage
16 rate computed as follows:

17 (i) $(A + B)/C + (D/E)$ where:

18 (A) "A" is the total medicaid payments to the hospital
19 for patient services in the hospital's fiscal year;

20 (B) "B" is the cash subsidies received directly from
21 state and local governments for patient services in the
22 hospital's fiscal year;

23 (C) "C" is the total revenues of the hospital for
24 patient services, including the amount of such cash
25 subsidies in the hospital's fiscal year;

1 (D) "D" is the total hospital charges for inpatient
2 hospital services attributable to charity care in the
3 hospital's fiscal year. This amount shall not include
4 contractual allowances and discounts (other than for
5 indigent patients not eligible for public assistance); and

6 (E) "E" is the hospital's total charges for inpatient
7 hospital services in the hospital's fiscal year.

8 (ii) The above amounts used in the formula must be from
9 the hospital's most recent fiscal year for which costs have
10 been settled with the department.

11 ~~(u)~~(t) "Urban hospital" means an acute care hospital
12 that is located within a metropolitan statistical area as
13 defined by the federal executive office of management and
14 budget.

15 ~~(v)~~(u) "Rural hospital" means an acute care hospital
16 that is not located within a metropolitan statistical area
17 as defined by the federal executive office of management and
18 budget.

19 (3) Medicaid payment is not allowable for services
20 provided in an inpatient psychiatric hospital that do not
21 meet the definition of acute psychiatric inpatient care set
22 forth in ARM 46.12.590~~(2)~~(2)(j) or for services provided
23 in a residential treatment facility that do not meet the
24 definition of residential psychiatric care set forth in ARM
25 46.12.590~~(2)~~(2)(k).

1 (4) Medicaid reimbursement is not available for
2 services until and unless a certification of need for
3 services, as defined in 42 CFR 441.152(a) and 153, has been
4 completed:

5 (a) prior to admission, for an individual who is a
6 recipient of medicaid when admitted to the facility;

7 (b) within 14 days after an emergency admission; or

8 (c) for individuals applying for medicaid while in the
9 facility, within 14 days after an eligibility determination
10 and covering the entire stay in the facility.

11 (5) The provider must notify the department's
12 designated review organization within three working days of
13 an emergency admission so that a certification can be
14 completed within 14 days of admission. If the provider fails
15 to timely notify the review organization, the department
16 shall deny reimbursement for the period from admission to
17 the actual date of notification."

18 NEW SECTION. **Section 2.** Effective date. [This act] is
19 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 SB0414, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill amends the Administrative Rules of Montana (ARM), removing restrictions on eligibility for Medicaid reimbursement for providers of inpatient hospital psychiatric services.

ASSUMPTIONS:

Reimbursement Based

1. This legislation will allow facilities that are not free-standing and/or not exclusively for individuals under the age of 21 to become Medicaid providers.
2. Under current law, there are two ways of reimbursing inpatient psychiatric services, based on the status of the provider. If a youth is in an acute care facility, receiving inpatient psychiatric services, the facility is reimbursed under a prospective payment system called Diagnosis Related Groups (DRGs). This group of providers are currently restricted from eligibility for Medicaid reimbursement for inpatient youth psychiatric services. The other method of reimbursement is based on actual cost, and providers who are eligible for Medicaid reimbursement for inpatient youth psych services receive this reimbursement.
3. The average DRG reimbursement per stay (based on 77 individuals under age 21 discharged after receiving inpatient psychiatric care in acute care facilities during FY92) was \$3,664 in FY92 and is projected to be \$3,664 in FY94 and \$3,810 in FY95.
4. The average cost based reimbursement for an inpatient psych stay was \$15,649 in FY92. The projected FY94 cost of inpatient psychiatric care for individuals under the age of 21 is \$16,926 and \$17,603 in FY95. This is based on inpatient psychiatric costs as provided under current law.
5. This bill removes the DRG reimbursement system for inpatient psychiatric services in acute care hospitals, replacing this system with reimbursement based on actual costs. This would cost an additional \$13,262 (\$16,926-\$3,664) over the DRG rate per stay in FY94 and \$13,793 (\$17,603-\$3,810) over the DRG rate in FY95.

Provider Changes and Caseload Increases

6. Glacier View Hospital would become a Medicaid provider under this legislation. This fiscal note assumes that 50% of its beds (seven beds per year) would be filled with individuals under the age of 21, and 50% of these would be Medicaid eligible (approximately four patients per year).
7. Acute care hospitals with psychiatric programs will be likely to develop inpatient youth programs, since the proposed funding is more favorable than the current DRG reimbursement. This may cause an increase in caseload; however, it is not possible to estimate that increase at this time.

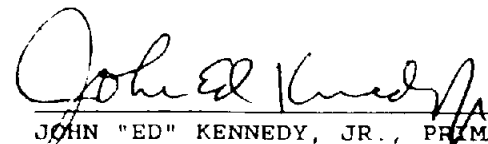
Current Law

8. The federal funds for youth inpatient psychiatric services are appropriated to SRS and the general fund is appropriated to DFS. This fiscal note includes both SRS and DFS inpatient psychiatric costs.

(continued)

 2-22-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/23/93
JOHN "ED" KENNEDY, JR., PRIMARY SPONSOR DATE

Fiscal Note for SB0414, as introduced

SB 414

9. This fiscal note assumes that eligibility for services is determined using the "family of 1" rule. (This rule requires SRS to consider only a youth's income, rather than family income, in determining eligibility for Medicaid.)
10. During FY92, SRS contracted to have new weights developed for the DRG system. If inpatient psychiatric services are no longer included in the reimbursement system, the weights will need to be recalibrated. This would cost \$125,000 during FY94 only. Funding is a 50/50 general fund and federal fund split.

FISCAL IMPACT:

<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>
Med Admin	\$ 5,876,611	\$ 6,001,611	\$ 125,000	\$ 5,996,016	\$ 5,996,016	\$ 0
Med Benefits-Acute Care (1)	82,054,575	83,075,749	1,021,174	95,886,380	96,948,441	1,062,061
Med Benefits-Inp Psych-SRS (2)	10,357,737	10,405,820	48,083	11,849,304	11,898,944	49,640
Med Benefits-Inp Psych-DFS (3)	<u>4,226,517</u>	<u>4,246,138</u>	<u>19,621</u>	<u>4,958,219</u>	<u>4,978,991</u>	<u>20,772</u>
Total	\$102,515,440	\$103,729,318	\$1,213,878	\$118,689,919	\$119,822,392	\$1,132,473

Funding:

General Fund	\$ 30,368,039	\$ 30,746,096	\$ 378,057	\$ 35,636,443	\$ 35,970,523	\$ 334,080
Federal Funds	<u>72,147,401</u>	<u>72,983,222</u>	<u>835,821</u>	<u>83,053,476</u>	<u>83,851,869</u>	<u>798,393</u>
Total	\$102,515,440	\$103,729,318	\$1,213,878	\$118,689,919	\$119,822,392	\$1,132,473

Net Impact:

To General Fund	\$ 378,057	\$ 334,080
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- (1) Acute care includes SRS inpatient hospital services only.
- (2) and (3) Current inpatient psychiatric includes the federal funds at SRS and the general fund match in the Department of Family Services (DFS). Separate lines are listed for this program, detailing the amount in both the SRS and DFS budgets and the corresponding funding requirements.

TECHNICAL NOTES: This legislation would nullify the Human Services subcommittee action to eliminate inpatient youth psychiatric care as a Medicaid covered service, which reduced \$6.2 million general fund over the 1995 biennium.