

1 SENATE BILL NO. 411

2 INTRODUCED BY M. CAFERRO, S. SALES

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND
 5 HUMAN SERVICES TO CLOSE THE MONTANA DEVELOPMENTAL CENTER; CREATING A TEMPORARY
 6 TRANSITION PLANNING COMMITTEE TO ASSIST THE DEPARTMENT IN DEVELOPING OF A PLAN FOR
 7 CLOSURE; REQUIRING THE DEPARTMENT TO MOVE RESIDENTS INTO COMMUNITY-BASED SERVICES;
 8 ESTABLISHING THE DEPARTMENT'S DUTIES; ESTABLISHING LIMITS ON ADMISSIONS TO THE MONTANA
 9 DEVELOPMENTAL CENTER; ESTABLISHING LIMITS ON EXPENDITURES; AMENDING SECTIONS 20-7-401,
 10 53-20-102, 53-20-104, 53-20-125, 53-20-129, 53-20-146, 53-20-148, 53-20-161, 53-20-163, 53-20-214, AND
 11 90-7-220, MCA; AND PROVIDING EFFECTIVE DATES."

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

14

15 NEW SECTION. **Section 1. Legislative intent -- direction to department of public health and**
 16 **human services.** It is the intent of the legislature to provide services to individuals with developmental disabilities
 17 in the community, as established in 53-20-101 and 53-20-301, and to close the Montana developmental center.
 18 To accomplish this purpose, the legislature directs the department of public health and human services to:

19 (1) in conjunction with the transition planning committee established in [section 2], develop and
 20 implement a plan to close the Montana developmental center by June 30, 2017;

21 (2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop
 22 the services needed to move residents out of the Montana developmental center and into community-based
 23 services; and

24 (3) transition most residents out of the Montana developmental center and into community-based
 25 services by ~~July 1, 2016~~, DECEMBER 31, 2016, with no more than 12 residents remaining at the facility by that
 26 date. As part of this transition, the legislature intends for the department of public health and human services to:

27 (a) actively pursue the timely discharge of Montana developmental center residents into
 28 community-based services; and

29 (b) work with community providers to develop necessary services.

30

1 NEW SECTION. **Section 2. Transition planning committee -- membership -- duties.** (1) There is
 2 a transition planning committee to make recommendations and help the department of public health and human
 3 services plan for carrying out the purposes of [sections 1 through 4].

4 (2) The committee shall consist of:

5 (a) two members of the Montana senate, one appointed by the senate president and one appointed by
 6 the senate minority leader;

7 (b) two members of the Montana house, one appointed by the house speaker and one appointed by the
 8 house minority leader; and

9 (c) 11 members appointed by the governor as follows:

10 (i) the governor's health policy advisor;

11 (ii) one representative of the department of public health and human services;

12 (iii) two representatives of community mental health centers;

13 (iv) two providers of community-based services;

14 (v) one representative of the state protection and advocacy program for individuals with developmental
 15 disabilities as authorized by 42 U.S.C. 15043(a)(2);

16 (vi) one family member or guardian of an individual who is committed to the Montana developmental
 17 center or who was committed within the previous 20 years;

18 (vii) one member of the mental disabilities board of visitors provided for in 2-15-211;

19 (viii) one member of the Montana council on developmental disabilities provided for in 2-15-1869; and

20 (ix) one representative of an advocacy organization for individuals with developmental disabilities.

21 ~~(3) (a) Except as provided in subsection (3)(b), committee members are entitled to compensation and~~
 22 ~~reimbursement for expenses as provided in 2-18-501 through 2-18-503.~~

23 ~~_____ (b) Committee members who are full-time salaried employees of the state are not entitled to~~
 24 ~~compensation under this subsection but may be reimbursed for expenses as provided in 2-18-501 through~~
 25 ~~2-18-503.~~

26 ~~(4)~~(3) The committee shall:

27 (a) design and recommend to the department of public health and human services a plan to close the
 28 Montana developmental center and transition residents into community-based services;

29 (b) propose a rate structure for providers of community-based services;

30 (c) identify potential sources of funding to support the proposed rate structure;

1 (d) recommend community-based services necessary to allow for the closure of the Montana
2 developmental center; and

3 (e) recommend secure facilities necessary to allow for the closure of the Montana developmental center.

4 ~~(5)~~(4) The committee shall meet at least quarterly and must be disbanded no later than June 30, 2017.

5 ~~(6)~~(5) The committee shall report to the legislative finance committee and the children, families, health,
6 and human services interim committee as requested by those committees.

7
8 **NEW SECTION. Section 3. Transition planning -- department of public health and human services**
9 **responsibilities -- rulemaking.** The department of public health and human services shall:

10 (1) provide members of the transition planning committee with necessary information and staff support
11 to carry out the committee's duties;

12 (2) implement a plan for the closure of the Montana developmental center based on recommendations
13 from the transition planning committee; and

14 (3) designate by rule the criteria that a community-based service must meet to be designated as a
15 residential facility.

16
17 **NEW SECTION. Section 4. Transfer fee.** The department of public health and human services shall
18 assess a fee of \$1,000 on a provider of community-based services who returns an individual to the Montana
19 developmental center within 90 days after accepting the individual for community-based services.

20
21 **NEW SECTION. SECTION 5. LIMITATION ON EXPENDITURES. FOR THE BIENNIUM BEGINNING JULY 1, 2015,**
22 **EXPENDITURES FOR PLACING SERIOUSLY DEVELOPMENTALLY DISABLED INDIVIDUALS IN PRIVATE, COMMUNITY-BASED**
23 **RESIDENTIAL FACILITIES PURSUANT TO TITLE 53, CHAPTER 20, PART 1, OR IN ACCORDANCE WITH 46-14-221 OR**
24 **46-14-312 MAY NOT EXCEED THE AMOUNT APPROPRIATED IN HOUSE BILL NO. 2 FOR THE MONTANA DEVELOPMENTAL**
25 **CENTER.**

26
27 **Section 6.** Section 20-7-401, MCA, is amended to read:

28 **"20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following
29 definitions apply:

30 (1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals

1 With Disabilities Education Act as having a disability and who because of the disability needs special education
2 and related services.

3 (2) "Free appropriate public education" means special education and related services that:

4 (a) are provided at public expense under public supervision and direction and without charge;

5 (b) meet the accreditation standards of the board of public education, the special education requirements
6 of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

7 (c) include preschool, elementary school, and high school education in Montana; and

8 (d) are provided in conformity with an individualized education program that meets the requirements of
9 the Individuals With Disabilities Education Act.

10 (3) "Related services" means services in accordance with regulations of the Individuals With Disabilities
11 Education Act that are required to assist a child with a disability to benefit from special education.

12 (4) "Special education" means specially designed instruction, given at no cost to the parents or
13 guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted
14 in a classroom, home, hospital, institution, or other setting and instruction in physical education.

15 (5) "State-operated adult health care facility providing special education services to its residents" means
16 the Montana state hospital, ~~the Montana developmental center,~~ the Montana mental health nursing care center,
17 or the Montana chemical dependency treatment center.

18 (6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's
19 interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."
20

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

22 **"53-20-102. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

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

3 (3) "Case manager" means a person who is responsible for service coordination, planning, and crisis
4 intervention for persons who are eligible for community-based developmental ~~disability~~ disabilities services from
5 the department of public health and human services.

6 (4) "Census" means the number of residents occupying beds in a residential facility on a particular date.

7 ~~(4)~~(5) "Community treatment plan" means a comprehensive, individualized plan of care that addresses
8 the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously
9 developmentally disabled.

10 ~~(5)~~(6) "Community-based facilities" or "community-based services" means those facilities and services
11 that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a
12 community setting.

13 ~~(6)~~(7) "Court" means a district court of the state of Montana.

14 ~~(7)~~(8) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist,
15 or a person with a master's degree in psychology, who:

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

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

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

19 ~~(8)~~(9) "Developmental disability" means a disability that:

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

22 (b) requires treatment similar to that required by intellectually disabled individuals;

23 (c) originated before the individual attained age 18;

24 (d) has continued or can be expected to continue indefinitely; and

25 (e) results in the person having a substantial disability.

26 ~~(9)~~(10) "Habilitation" means the process by which a person who has a developmental disability is assisted
27 in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs
28 and the demands of the environment and in raising the level of the person's physical, mental, and social
29 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

30 ~~(10)~~(11) "Individual treatment planning team" means the interdisciplinary team of persons involved in and

1 responsible for the habilitation of a resident. The resident is a member of the team.

2 ~~(11)~~(12) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers
3 and sisters of a person.

4 ~~(12)~~(13) "Qualified intellectual disability professional" means a professional program staff person for the
5 residential facility who the department of public health and human services determines meets the professional
6 requirements necessary for federal certification of the facility.

7 ~~(13)~~(14) "Resident" means a person committed to a residential facility.

8 ~~(14)~~(15) "Residential facility" or "facility" means:

9 (a) the Montana developmental center; or

10 (b) a private, community-based facility approved by the department of public health and human services
11 as a facility able to meet the needs of a seriously developmentally disabled person who is committed by a court
12 to a residential facility INDIVIDUALS COMMITTED TO A RESIDENTIAL FACILITY PURSUANT TO THIS CHAPTER OR PLACED IN
13 A RESIDENTIAL FACILITY PURSUANT TO TITLE 46, CHAPTER 14.

14 ~~(15)~~(16) "Residential facility screening team" means a team of persons, appointed as provided in
15 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to
16 a residential facility or the imposition of a community treatment plan is appropriate.

17 ~~(16)~~(17) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
18 developmentally disabled and for whom the petition requests commitment to a residential facility or imposition
19 of a community treatment plan.

20 ~~(17)~~(18) "Responsible person" means a person willing and able to assume responsibility for a person who
21 is seriously developmentally disabled or alleged to be seriously developmentally disabled.

22 ~~(18)~~(19) "Seriously developmentally disabled" means a person who:

23 (a) has a developmental disability;

24 (b) is impaired in cognitive functioning; and

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

27

28 **Section 8.** Section 53-20-104, MCA, is amended to read:

29 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
30 independent board of inquiry and review established to ensure that the treatment of all persons committed to a

1 ~~residential facility~~ the Montana developmental center is humane and decent and meets the requirements set forth
2 in this part.

3 (2) The board shall review all plans for experimental research or hazardous treatment procedures
4 involving persons committed to ~~a residential facility~~ the Montana developmental center to ensure that the research
5 project is humane and not unduly hazardous and that it complies with the principles of the statement on the use
6 of human subjects for research of the American association on mental deficiency and with the principles for
7 research involving human subjects required by the United States department of health and human services. An
8 experimental research project involving ~~persons committed to a residential facility~~ Montana developmental center
9 residents affected by this part may not ~~be commenced~~ begin unless it is approved by the mental disabilities board
10 of visitors.

11 (3) The board shall investigate all cases of alleged mistreatment of a Montana developmental center
12 resident.

13 (4) The board shall ~~at least annually~~ inspect ~~every residential facility that is providing a course of~~
14 ~~residential habilitation and treatment to any person pursuant to this part~~ the Montana developmental center at
15 least annually. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary
16 facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all
17 habilitation programs being implemented by the facility.

18 (5) The board shall inspect the file of each person committed to ~~a residential facility~~ the Montana
19 developmental center pursuant to this part to ensure that a habilitation plan exists and is being implemented. The
20 board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

21 (6) The board may assist a Montana developmental center resident ~~at a residential facility~~ in resolving
22 a grievance the resident may have concerning the resident's commitment or course of treatment and habilitation
23 in the facility.

24 (7) If the board believes that ~~a facility~~ the Montana developmental center is failing to comply with the
25 provisions of this part in regard to its physical facilities or its treatment of a resident, it shall report its findings at
26 once to the superintendent of the facility and the director of the department of public health and human services.
27 If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board
28 may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person
29 appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

30 (8) The board shall report annually to the governor concerning the status of the ~~residential facilities and~~

1 ~~habilitation programs that it has inspected~~ Montana developmental center and its habilitation programs."

2

3 **Section 9.** Section 53-20-125, MCA, is amended to read:

4 **"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or**
 5 **imposition of community treatment plan -- hearing.** (1) A court may commit a person to a residential facility
 6 or impose a community treatment plan only if the person:

7 (a) is 18 years of age or older; and

8 (b) is determined to be seriously developmentally disabled and in need of commitment to a residential
 9 facility or imposition of a community treatment plan by the residential facility screening team, as provided in
 10 53-20-133, and by a court, as provided in 53-20-129 or in this section.

11 (2) After the screening required by 53-20-133, the residential facility screening team shall file its written
 12 recommendation and report with the court. The report must include the factual basis for the recommendation and
 13 must describe any tests or evaluation devices that have been employed in evaluating the respondent. The
 14 residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and
 15 any other party requesting it the social and placement information that the team relied ~~upon~~ on in making its
 16 determination.

17 (3) The residential facility team may recommend commitment to a specific residential facility.

18 ~~(3)(4)~~ (4) Notice of the determination of the residential facility screening team must be mailed or delivered
 19 to:

20 (a) the respondent;

21 (b) the respondent's parents, guardian, or next of kin, if known;

22 (c) the responsible person;

23 (d) the respondent's advocate, if any;

24 (e) the county attorney;

25 (f) the residential facility to which the residential facility screening team has recommended commitment;

26 (g) the attorney for the respondent, if any; and

27 (h) the attorney for the parents or guardian, if any.

28 ~~(4)(5)~~ (5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's
 29 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the
 30 residential facility screening team. The request for a hearing must be made in writing within 15 days of service

1 of the report.

2 ~~(5)~~(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection ~~(4)~~ (5).

3 ~~(6)~~(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

4 ~~(7)~~(8) Upon receiving the report of the residential facility screening team and after a hearing, if one is
5 requested, the court shall enter findings of fact and take one of the following actions:

6 (a) If both the residential facility screening team and the court find that the respondent is seriously
7 developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent
8 committed to a residential facility for an extended course of treatment and habilitation, subject to the provisions
9 of subsection (12).

10 (b) If both the residential facility screening team and the court find that the respondent is seriously
11 developmentally disabled but either the residential facility screening team or the court finds that a less restrictive
12 community treatment plan has been proposed, the court may impose a community treatment plan that meets the
13 conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties
14 or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4),
15 it may order the respondent committed to a residential facility. The court may not impose a community treatment
16 plan unless the residential facility screening team certifies that all services in the proposed plan meet the
17 conditions of 53-20-133(4)(c) and (4)(d).

18 (c) If either the residential facility screening team or the court finds that the respondent has a
19 developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and
20 refer the respondent to the department of public health and human services to be considered for placement in
21 voluntary community-based services according to 53-20-209.

22 (d) If either the residential facility screening team or the court finds that the respondent does not have
23 a developmental disability or is not in need of developmental ~~disability~~ disabilities services, the court shall dismiss
24 the petition.

25 ~~(8)~~(9) (a) If the residential facility screening team recommends commitment to a residential facility or
26 imposition of a community treatment plan and none of the parties notified of the recommendation request a
27 hearing within 15 days of service of the screening team's report, the court may:

28 (i) issue an order committing the respondent to the residential facility for an extended period of treatment
29 and habilitation;

30 (ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth

1 in 53-20-133(4); or

2 (iii) initiate its own inquiry as to whether an order should be granted.

3 (b) The court may not impose a community treatment plan unless the residential facility screening team
4 certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

5 ~~(9)~~(10) The court may refuse to authorize commitment of a respondent to a residential facility for an
6 extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

7 ~~(10)~~(11) A court order entered in a proceeding under this part must be provided to the residential facility
8 screening team.

9 (12) (a) A court may not commit a respondent to a residential facility unless the facility has confirmed in
10 writing that admission of the respondent will not cause the census at the residential facility to exceed its licensed
11 capacity.

12 (b) After ~~June 30, 2016~~ DECEMBER 31, 2016, a court may not commit a respondent to the Montana
13 developmental center unless the superintendent has confirmed in writing that admission of the respondent will
14 not cause the census at the facility to exceed 12 persons."

15

16 **Section 10.** Section 53-20-129, MCA, is amended to read:

17 **"53-20-129. Emergency admission and commitment.** (1) ~~A~~ Subject to the provisions of subsection
18 (3), a person believed to be seriously developmentally disabled may be admitted to a residential facility or a
19 temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to
20 the person or approval by the residential facility screening team when necessary to protect the person or others
21 from death or serious bodily injury, as defined in 45-2-101.

22 (2) An emergency admission to a residential facility may be initiated only by a developmental disabilities
23 professional.

24 (3) (a) An emergency admission to a residential facility may not proceed unless the residential facility
25 and the department of public health and human services are given reasonable notice of the need for placement
26 by the developmental disabilities professional responsible for emergency admission has confirmed in writing that
27 admission of the person will not cause the census at the facility to exceed its licensed capacity and that the facility
28 can accommodate the emergency needs of the person.

29 (b) After ~~June 30, 2016~~ DECEMBER 31, 2016, an emergency admission to the Montana developmental
30 center may not proceed unless the person in charge of the facility has confirmed in writing that admission of the

1 respondent will not cause the census at the facility to exceed 12 persons.

2 (4) A petition for emergency commitment must be filed on the next judicial day after an emergency
3 admission to a residential facility by the county attorney of the county where the respondent resides.

4 (5) A petition for imposition of an emergency community treatment plan may be filed by the county
5 attorney of the county where the respondent resides and must include or have attached the written report of a
6 case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

7 (6) The residential facility screening team shall report back to the court on the seventh judicial day
8 following the filing of the petition for emergency commitment or imposition of a temporary community treatment
9 plan.

10 (7) Once the report of the residential facility screening team is received by the court, continued
11 placement in the residential facility or continued imposition of the temporary community treatment plan may not
12 continue without an order of the court for emergency commitment or continued imposition of the community
13 treatment plan.

14 (8) A court may order an emergency commitment or continue a temporary community treatment plan
15 only when the residential facility screening team has recommended and the court has determined that the
16 emergency commitment or continued imposition of a community treatment plan is necessary to protect the
17 respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community
18 treatment plan must meet the conditions set forth in 53-20-133(4).

19 (9) An order for emergency commitment or continued imposition of a temporary community treatment
20 plan may be entered without a hearing before the court if the court finds that the record supports the order.

21 (10) An emergency commitment to a residential facility or imposition of a temporary community treatment
22 plan may not continue for longer than 30 days after placement in the residential facility or imposition of a
23 temporary community treatment plan unless a petition for an extended commitment to the residential facility or
24 for imposition of a community treatment plan as provided in 53-20-121 has been filed."

25

26 **Section 11.** Section 53-20-146, MCA, is amended to read:

27 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential
28 facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and
29 informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian
30 or the responsible person appointed by the court after opportunities for consultation with independent specialists

1 and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities
2 board of visitors before consent is sought.

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

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

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

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

24 (6) Electric shock devices are considered a research technique for the purpose of this part. Electric
25 shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated
26 and possibly permanent physical damage to the resident and only after alternative techniques have failed. The
27 use of electric shock devices is subject to the conditions prescribed by this part for experimental research
28 generally and may be used only under the direct and specific order of a physician and ~~the superintendent of the~~
29 an individual designated by the department of public health and human services to order the treatment for an
30 individual placed in a residential facility."

1
2 **Section 12.** Section 53-20-148, MCA, is amended to read:
3 **"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation,
4 including medical treatment, education, and care suited to their needs, regardless of age, degree of intellectual
5 disability, or disabling condition. Each resident has a right to a habilitation program that will maximize the
6 resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility
7 shall recognize that each resident, regardless of ability or status, is entitled to develop and realize the resident's
8 fullest potential. The facility shall implement the principle of normalization so that each resident may live as
9 normally as possible.

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

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

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

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

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

1 of the resident;

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

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

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

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

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

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

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

29 (10) Each resident, the parents or guardian of each resident, and the responsible person appointed by
30 the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the

1 above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning
 2 the care and habilitation of the resident that may be available to assist them in understanding the situation of the
 3 resident and the rights of the resident in the facility."

4

5 **Section 13.** Section 53-20-161, MCA, is amended to read:

6 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and
 7 must be readily available to persons who are directly involved with the particular resident and to the mental
 8 disabilities board of visitors. All information contained in a resident's records must be considered privileged and
 9 confidential. The parents or guardian, the responsible person appointed by the court, and any person properly
 10 authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's
 11 parents or guardian or the responsible person must be permitted access to the resident's records. Information
 12 may not be released from the records of a resident or former resident of the residential facility unless the release
 13 of the information has been properly authorized in writing by:

14 (a) the court;

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

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

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

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

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

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

26 ~~_____ (h) the superintendent of the residential facility or the superintendent's designee as custodian of a~~
 27 ~~resident of that facility whenever release is required by federal or state law or department of public health and~~
 28 ~~human services rules~~

29 (f) a residential facility, through an individual designated by the department of public health and human
 30 services by rule, when the facility is the custodian of a resident:

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

3 (ii) under the age of majority for whom there is no parent or legal guardian; or

4 (iii) of the facility whenever release is required by federal or state law or department rules.

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

17 (3) These records must include:

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

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

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

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

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

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

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

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

27 (g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes
 28 and failures of the habilitation program and whatever modifications are necessary;

29 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the
 30 community and any modifications to the postinstitutionalization plan and a summary of the steps that have been

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

- 18
- 19 **Section 14.** Section 53-20-163, MCA, is amended to read:
- 20 **"53-20-163. Abuse of residents prohibited.** (1) Any form of mistreatment, neglect, or abuse of a
21 resident is prohibited.
- 22 (2) A residential facility shall publish in ~~each cottage and building~~ the facility and circulate to staff a
23 written policy statement that defines the facility's requirements for reporting and investigating allegations of
24 mistreatment, neglect, or abuse and injuries from an unknown source.
- 25 (3) Each allegation of mistreatment, neglect, or abuse and each injury from an unknown source must
26 be reported immediately to:
- 27 (a) the superintendent of department of public health and human services;
- 28 (b) a representative of the facility as designated by the department of public health and human services
29 by rule; and
- 30 (c) to if the alleged mistreatment, neglect, or abuse or the injury occurred at the Montana developmental

1 center, the department of justice, and the

2 (4) The residential facility shall maintain a written record that:

3 (a) each allegation and each injury from an unknown source has been reported to the department of
4 justice as required by this section;

5 (b) each allegation and each injury from an unknown source has been thoroughly investigated and
6 findings stated;

7 (c) the investigation into the allegation or injury from an unknown source was initiated within 24 hours
8 of the report of the incident; and

9 (d) the results were reported to the director of the department of public health and human services.

10 ~~(4)~~(5) The residential facility director of the department of public health and human services shall report
11 the details of each reported allegation, including providing the written record created pursuant to this section, to
12 the mental disabilities board of visitors and the state protection and advocacy program for individuals with
13 developmental disabilities, as authorized by 42 U.S.C. 15043(a)(2), within 5 business days of the incident. The
14 director and the residential facility may not redact any information that is provided pursuant to this subsection.
15 The mental disabilities board of visitors and the state protection and advocacy program shall maintain the
16 confidentiality of any report received under this section to the same extent that the reports are confidential under
17 state and federal laws applicable to the residential facility.

18 ~~(5)~~(6) Upon receiving a report of an allegation of mistreatment, neglect, or abuse or of an injury from an
19 unknown source at the Montana developmental center, the department of justice shall conduct a thorough
20 investigation of each allegation or each injury from an unknown source and provide a written report of its
21 investigation and findings to the superintendent of the residential facility within 5 business days of the incident.

22 ~~(6)~~(7) The residential facility Montana developmental center shall provide the department of justice with
23 access to records and other information necessary to conduct investigations under this section. The department
24 of justice shall maintain the confidentiality of any information received in the course of conducting investigations
25 under this section to the same extent that the information is confidential under state and federal laws applicable
26 to the residential facility.

27 ~~(7)~~(8) If a state licensing authority or federal medicaid certification authority issues a statement of
28 deficiency indicating that the residential facility has failed to meet licensing or certification standards due to the
29 thoroughness or timeliness of an investigation conducted under this section, the department of justice shall
30 participate in preparing a plan of correction to restore the residential facility's compliance with licensing or

1 certification standards.

2 ~~(8)(9)~~ If in the course of conducting an investigation under this section the department of justice develops
3 reasonable cause to believe that a criminal offense has occurred, the department of justice shall refer the matter
4 to the appropriate local law enforcement agency."

5

6 **Section 15.** Section 53-20-214, MCA, is amended to read:

7 **"53-20-214. Certain transfers of funds authorized.** Funds appropriated to the Montana state hospital
8 or Montana developmental center may be ~~transferred by budget amendment as provided in appropriation acts~~
9 ~~and with the approval of the governor to the department of public health and human services~~ used for
10 comprehensive developmental disability systems if:

11 (1) residents of any of those institutions are transferred to a comprehensive developmental disability
12 system resulting in less expenditures at that institution than allowed by legislative appropriation; and

13 (2) a transfer of appropriations between programs is:

14 (a) made as provided in 17-7-139; and

15 (b) approved by the governor."

16

17 **Section 16.** Section 90-7-220, MCA, is amended to read:

18 **"90-7-220. Montana developmental center loan.** (1) The department of public health and human
19 services may enter into a loan agreement with the Montana facility finance authority for the purpose of financing
20 the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the
21 Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of
22 the financing. The maximum principal amount of the loan may not exceed \$10.5 million for construction and
23 related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and
24 the loan must be payable over a term not to exceed 30 years and must bear interest and contain other terms and
25 provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the
26 department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used
27 to pay the principal and interest on the loan as provided in the loan agreement.

28 (2) The loan may be secured by a mortgage on the Montana developmental center facility, including the
29 land on which it is located. The loan constitutes a special limited obligation of the department, and the principal
30 and interest payments required by that agreement are payable solely from the facility revenue obtained by the

1 department from the ownership and operation of and the provision of services at the Montana developmental
 2 center, including payments or reimbursements from private users, insurers, and the federal government. All
 3 facility revenue obtained from services provided by the Montana developmental center must be deposited in a
 4 special revenue fund and must be applied to the payment of the principal and interest payments as due under
 5 the loan agreement. Whenever facility revenue exceeds the amount and terms specified and required to repay
 6 the loan and maintain required reserves, the excess must be ~~deposited to the general fund~~ used to pay the
 7 remainder of the principal and interest of the loan. As long as the loan remains outstanding and the department
 8 provides services for persons with developmental disabilities, the department shall use the Montana
 9 developmental center for those purposes or for other purposes as permitted by the loan agreement and state law,
 10 except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon
 11 foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land
 12 commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of
 13 the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land
 14 appraiser. The loan agreement may contain other provisions or agreements that the department determines are
 15 necessary and that are not inconsistent with the provisions of this chapter.

16 (3) The obligations of the department under the agreement are special limited obligations payable solely
 17 from the facility revenue and do not constitute a debt of the state or obligate the state to appropriate or apply any
 18 funds or revenue of the state, except the facility revenue as provided in this section."

19
 20 **NEW SECTION. Section 17. Codification instruction.** [Sections 1 through 4] are intended to be
 21 codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply
 22 to [sections 1 through 4].

23
 24 **COORDINATION SECTION. Section 18. Coordination instruction.** If both House Bill No. 2 and [this
 25 act] are passed and approved and House Bill No. 2 contains an appropriation for the Disability Services Division
 26 of the Department of Public Health and Human Services, then House Bill No. 2 must be amended to include the
 27 following language: "The appropriation for the Disability Services Division may be used to fund additional
 28 community-based facilities and services to accommodate individuals who are at or would otherwise be placed
 29 at the Montana developmental center."

30

1 **NEW SECTION. Section 19. Effective dates.** (1) Except as provided in subsection (2), [this act] is
2 effective on passage and approval.

3 (2) [Section 5 6] is effective on the date that the Montana developmental center closes. The director of
4 the department of public health and human services shall certify the closure of the Montana developmental center
5 to the governor, and the governor shall transmit a copy of the certification to the code commissioner.

6

- END -