

SENATE BILL NO. 129

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR RECOVERY CENTERS; ESTABLISHING REQUIREMENTS FOR RECOVERY CENTERS; EXEMPTING RECOVERY CENTERS FROM THE CERTIFICATE OF NEED PROCESS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 50-5-101 AND 50-5-301, MCA."

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

NEW SECTION. **Section 1. Recovery centers -- limitations.** (1) A recovery center may operate only in conjunction with a licensed hospital or a licensed outpatient center for surgical services. The recovery center may be located in a designated area of the hospital or outpatient center for surgical services or may be a freestanding facility.

(2) (a) A patient may be admitted to a recovery center for up to 72 hours after a medically necessary surgery, an elective surgery, or a preventive diagnostic procedure. If a patient requires additional care after the expiration of the 72-hour limit, the center shall transfer the patient to an appropriate facility as provided in [section 3].

(b) A recovery center may not admit a patient who is not expected to fully or partially recover to a former state of well-being.

(c) Patients must be under the general care of a physician.

(3) A recovery center may have up to 10 beds.

(4) The administrator of a recovery center shall maintain written policies providing administrative direction, including but not limited to policies on the organization and administrative authority of the center.

NEW SECTION. **Section 2. Recovery centers -- staffing.** (1) A recovery center shall maintain a staffing plan for medical and nursing services.

(2) (a) A recovery center must have a medical director who is a physician. The medical director is responsible for planning, conducting, and directing the medical affairs of the recovery center.

(b) The medical director must:



1 (i) be board eligible or board certified in at least one of the services provided at the recovery center and
2 must have at least 12 months of experience or 6 months of training in the care of patients in a postsurgical
3 environment; or

4 (ii) have served for at least 12 months in a leadership role at a health care facility during the previous
5 5-year period.

6 (c) In a geographical area where a medical director meeting the requirements of subsection (2)(b) is not
7 available, another licensed and credentialed physician may serve as medical director if approved by the
8 department to do so prior to appointment.

9 (3) (a) The medical staff of a recovery center must consist of at least two physicians. The center may
10 hire physicians or contract for physician services.

11 (b) Physician services must be available in the event of an emergency.

12 (4) (a) A recovery center shall employ a registered nurse as director of nursing. The director of nursing
13 must be present at least 40 hours each week when patients are in the facility.

14 (b) At least one registered nurse and one other member of the nursing staff must be on duty at all times
15 when patients are in the facility.

16 (5) The recovery center shall maintain a staffing plan that:

17 (a) is based on the number of patients and the health care needs of the patients; and

18 (b) includes individual staffing patterns for each nursing unit in the center.

19

20 **NEW SECTION. Section 3. Recovery centers -- discharge -- transfers.** (1) A hospital or outpatient
21 center for surgical services shall provide for the prompt and safe transfer of patients between the hospital or
22 outpatient center and the recovery center and shall ensure that each patient transferred has a visible means of
23 identification on the patient's person.

24 (2) A patient may not be discharged from a recovery center unless the patient is in a stable condition and
25 the discharge will not endanger the patient's continued well-being.

26 (3) (a) A patient may be transferred to a licensed hospital or another health care facility if the patient's
27 condition warrants a transfer.

28 (b) In order to handle cases of complications or emergencies, a recovery center shall maintain a
29 contractual relationship, including a transfer agreement, with a hospital as defined in 50-5-101. In transferring a
30 patient, the center shall:

1 (i) before the transfer, provide notice to the receiving hospital, including the reason for the transfer; and

2 (ii) during the transfer, provide the medical records related to the patient's stay at the recovery center.

3 (c) A recovery center may not transfer a patient to a hospital or other health care facility using only a call
4 to a 9-1-1 service.

5 (4) The recovery center must have written procedures and assigned responsibilities for discharging or
6 transferring patients, including provisions for transportation. Before discharging a patient, the center shall provide
7 the patient with verbal and written instructions for postoperative care, physician postoperative appointments, and
8 physician contact information.

9

10 **Section 4.** Section 50-5-101, MCA, is amended to read:

11 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates
12 otherwise, the following definitions apply:

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

14 (2) "Accreditation association for ambulatory health care" means the organization nationally recognized
15 by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation
16 status to the outpatient centers for surgical services that it finds meet its standards and requirements.

17 (3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's
18 life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

19 (4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that
20 provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that
21 does not provide overnight care.

22 (5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided
23 in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are
24 not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full
25 guardianship of the owner or manager.

26 (b) As used in this subsection (5), the following definitions apply:

27 (i) "Aged person" means a person as defined by department rule as aged.

28 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult
29 so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available
30 to meet those basic needs.

1 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department
2 rule as disabled.

3 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
4 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
5 administration.

6 (B) The term does not include the administration of prescriptive medications.

7 (6) "Affected person" means an applicant for a certificate of need, a health care facility located in the
8 geographic area affected by the application, an agency that establishes rates for health care facilities, or a
9 third-party payer who reimburses health care facilities in the area affected by the proposal.

10 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal
11 care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related
12 services.

13 (8) "Capital expenditure" means:

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

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

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

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

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

28 (12) "College of American pathologists" means the organization nationally recognized by that name that
29 surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards
30 and requirements.

1 (13) "Commission on accreditation of rehabilitation facilities" means the organization nationally
2 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
3 to a rehabilitation facility that it finds meets its standards and requirements.

4 (14) "Comparative review" means a joint review of two or more certificate of need applications that are
5 determined by the department to be competitive in that the granting of a certificate of need to one of the
6 applicants would substantially prejudice the department's review of the other applications.

7 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
8 persons who require supportive services and housing.

9 (16) "Construction" means the physical erection of a health care facility and any stage of the physical
10 erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

11 (17) "Council on accreditation" means the organization nationally recognized by that name that surveys
12 behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and
13 mental health centers upon their requests and grants accreditation status to programs and facilities that it finds
14 meet its standards and requirements.

15 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
16 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
17 50-5-233.

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

19 (20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys
20 hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and
21 requirements.

22 (21) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases
23 and includes freestanding hemodialysis units.

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

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

27 (24) "Healthcare facilities accreditation program" means the program nationally recognized by that name
28 that surveys health care facilities upon their requests and grants accreditation status to a health care facility that
29 it finds meets its standards and requirements.

30 (25) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private

1 or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to
2 provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The
3 term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home
4 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
5 intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers,
6 outpatient centers for primary care, outpatient centers for surgical services, recovery centers, rehabilitation
7 facilities, residential care facilities, and residential treatment facilities.

8 (b) The term does not include offices of private physicians, dentists, or other physical or mental health
9 care workers regulated under Title 37, including licensed addiction counselors.

10 (26) "Home health agency" means a public agency or private organization or subdivision of the agency
11 or organization that is engaged in providing home health services to individuals in the places where they live.
12 Home health services must include the services of a licensed registered nurse and at least one other therapeutic
13 service and may include additional support services.

14 (27) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
15 services.

16 (28) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral
17 medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services
18 include an educational component for the patient, the patient's caregiver, or the patient's family member.

19 (29) "Hospice" means a coordinated program of home and inpatient health care that provides or
20 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
21 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages
22 of illness and dying and that includes formal bereavement programs as an essential component. The term
23 includes:

24 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that
25 meets all medicare certification regulations for freestanding inpatient hospice facilities; and

26 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that
27 can house three or more hospice patients.

28 (30) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services
29 for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as
30 otherwise provided by law, services provided must include medical personnel available to provide emergency

1 care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has
2 an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and
3 provides 24-hour nursing care by licensed registered nurses. The term includes:

4 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
5 tubercular patients; and

6 (ii) specialty hospitals.

7 (b) The term does not include critical access hospitals.

8 (c) The emergency care requirement for a hospital that specializes in providing health services for
9 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
10 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed
11 registered nurses.

12 (31) "Infirmarium" means a facility located in a university, college, government institution, or industry for the
13 treatment of the sick or injured, with the following subdefinitions:

14 (a) an "infirmarium--A" provides outpatient and inpatient care;

15 (b) an "infirmarium--B" provides outpatient care only.

16 (32) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility
17 that provides intermediate developmental disability care for two or more persons.

18 (b) The term does not include community homes for persons with developmental disabilities that are
19 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
20 52-4-203.

21 (33) "Intermediate developmental disability care" means the provision of intermediate nursing care
22 services, health-related services, and social services for persons with a developmental disability, as defined in
23 53-20-102, or for persons with related problems.

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

26 (35) "Licensed health care professional" means a licensed physician, physician assistant, advanced
27 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
28 department of labor and industry.

29 (36) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,
30 residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more

1 individuals or that provides personal care.

2 (b) The term does not include community homes for persons with developmental disabilities licensed
3 under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care
4 facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations
5 providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult
6 correctional facilities operating under the authority of the department of corrections.

7 (37) "Medical assistance facility" means a facility that meets both of the following:

8 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
9 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless
10 a longer period is required because transfer to a hospital is precluded because of inclement weather or
11 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
12 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
13 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
14 of the individual.

15 (b) either is located in a county with fewer than six residents a square mile or is located more than 35
16 road miles from the nearest hospital.

17 (38) "Mental health center" means a facility providing services for the prevention or diagnosis of mental
18 illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
19 combination of these services.

20 (39) "Nonprofit health care facility" means a health care facility owned or operated by one or more
21 nonprofit corporations or associations.

22 (40) "Offer" means the representation by a health care facility that it can provide specific health services.

23 (41) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
24 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
25 of a youth and that:

26 (i) serves either adjudicated or nonadjudicated youth;

27 (ii) charges a fee for its services; and

28 (iii) provides all or part of its services in the outdoors.

29 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts,
30 4-H clubs, or other similar organizations.

1 (42) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed
2 physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for
3 surgical services.

4 (43) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization
5 that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and
6 that may include recovery care beds.

7 (44) "Patient" means an individual obtaining services, including skilled nursing care, from a health care
8 facility.

9 (45) "Person" means an individual, firm, partnership, association, organization, agency, institution,
10 corporation, trust, estate, or governmental unit, whether organized for profit or not.

11 (46) "Personal care" means the provision of services and care for residents who need some assistance
12 in performing the activities of daily living.

13 (47) "Practitioner" means an individual licensed by the department of labor and industry who has
14 assessment, admission, and prescription authority.

15 (48) "Recovery care bed" means, except as provided in [section 1] and 50-5-235, a bed occupied for less
16 than 24 hours by a patient recovering from surgery or other treatment.

17 (49) "Recovery center" means a health care facility that provides postsurgical, postprocedural, or
18 postdiagnostic medical and nursing services to patients for whom an uncomplicated recovery is anticipated and
19 for whom acute hospitalization is not required.

20 ~~(49)(50)~~ "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in
21 the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,
22 psychological and social services, or vocational evaluation and training or any combination of these services and
23 in which the major portion of the services is furnished within the facility.

24 ~~(50)(51)~~ "Resident" means an individual who is in a long-term care facility or in a residential care facility.

25 ~~(51)(52)~~ "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
26 living facility, or a retirement home.

27 ~~(52)(53)~~ "Residential psychiatric care" means active psychiatric treatment provided in a residential
28 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or
29 behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the
30 individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's

1 discharge to less restrictive levels of care at the earliest possible time.

2 ~~(53)~~(54) "Residential treatment facility" means a facility operated for the primary purpose of providing
3 residential psychiatric care to individuals under 21 years of age.

4 ~~(54)~~(55) "Retirement home" means a building or buildings in which separate living accommodations are
5 rented or leased to individuals who use those accommodations as their primary residence.

6 ~~(55)~~(56) "Skilled nursing care" means the provision of nursing care services, health-related services, and
7 social services under the supervision of a licensed registered nurse on a 24-hour basis.

8 ~~(56)~~(57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,
9 care, or treatment of one or more of the following categories:

10 (i) patients with a cardiac condition;

11 (ii) patients with an orthopedic condition;

12 (iii) patients undergoing a surgical procedure; or

13 (iv) patients treated for cancer-related diseases and receiving oncology services.

14 (b) For purposes of this subsection ~~(56)~~ (57), a specialty hospital may provide other services for medical
15 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
16 if the care encompasses 35% or less of the hospital services.

17 (c) The term "specialty hospital" does not include:

18 (i) psychiatric hospitals;

19 (ii) rehabilitation hospitals;

20 (iii) children's hospitals;

21 (iv) long-term care hospitals; or

22 (v) critical access hospitals.

23 ~~(57)~~(58) "State health care facilities plan" means the plan prepared by the department to project the need
24 for health care facilities within Montana and approved by the governor and a statewide health coordinating council
25 appointed by the director of the department.

26 ~~(58)~~(59) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
27 acute care or extended skilled nursing care to a patient.

28 ~~(59)~~(60) "The joint commission" means the organization nationally recognized by that name that surveys
29 health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets
30 its standards and requirements."

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Section 5. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required -- definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds \$1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds \$1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of \$150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only

1 skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of
2 care are defined in 50-5-101;

3 (h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical
4 dependency treatment; or

5 (i) the construction, development, or other establishment of a facility for ambulatory surgical care through
6 an outpatient center for surgical services in a county with a population of 20,000 or less according to the most
7 recent federal census or estimate.

8 (2) For purposes of this part, the following definitions apply:

9 (a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility,
10 or an inpatient chemical dependency facility. The term does not include:

11 (i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant
12 to subsection (1)(h);

13 (ii) an office of a private physician, dentist, or other physical or mental health care professionals, including
14 licensed addiction counselors; or

15 (iii) a recovery center, rehabilitation facility, or an outpatient center for surgical services.

16 (b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing
17 care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

18 (ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for
19 persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe
20 disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels,
21 motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or
22 individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the
23 authority of the department of corrections.

24 (3) This section may not be construed to require a health care facility to obtain a certificate of need for
25 a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than
26 a health care facility."

27
28 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified
29 as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [sections
30 1 through 3].

31 - END -