

SENATE BILL NO. 524

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CATEGORY D ASSISTED LIVING FACILITIES; ALLOWING CATEGORY D LIVING FACILITIES TO BE INDEPENDENT FACILITIES OR COLOCATED WITH OTHER LICENSED FACILITIES; LIMITING THE NUMBER OF RESIDENTS PERMITTED IN A CATEGORY D ASSISTED LIVING FACILITY; CLARIFYING THAT CATEGORY D ASSISTED LIVING FACILITIES ARE NOT REQUIRED TO USE SECLUSION, CHEMICAL RESTRAINTS, OR PHYSICAL RESTRAINTS; REQUIRING CATEGORY D ASSISTED LIVING FACILITIES TO RECEIVE PRIOR AUTHORIZATION TO USE RESTRAINTS AND SECLUSION; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE TECHNICAL ASSISTANCE AND A SPECIALIZED REIMBURSEMENT MODEL TO CATEGORY D ASSISTED LIVING FACILITIES; PROVIDING FOR DIVERSION FROM THE MONTANA STATE HOSPITAL TO CATEGORY D ASSISTED LIVING FACILITIES; PROVIDING A PROCESS TO COMMIT AN INDIVIDUAL TO A CATEGORY D ASSISTED LIVING FACILITY; ~~AND AND~~ AMENDING SECTIONS 50-5-226, 53-21-127, AND 53-21-199, MCA ~~; AND PROVIDING A TERMINATION DATE.~~"

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

Section 1. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in assisted living facilities. (1) An assisted living facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) An assisted living facility licensed as a category A facility under 50-5-227 may not admit or retain a category A resident unless each of the following conditions is met:

(a) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(b) The resident may not have a stage 3 or stage 4 pressure ulcer.

(c) The resident may not have a gastrostomy or jejunostomy tube.

(d) The resident may not require skilled nursing care or other skilled services on a continued basis except for the administration of medications consistent with applicable laws and regulations.

(e) The resident may not be a danger to self or others.

(f) The resident must be able to accomplish activities of daily living with supervision and assistance based on the following:

(i) the resident may not be consistently and totally dependent in four or more activities of daily living as a result of a cognitive or physical impairment; and

(ii) the resident may not have a severe cognitive impairment that renders the resident incapable of expressing needs or making basic care decisions.

(3) An assisted living facility licensed as a category B facility under 50-5-227 may not admit or retain a category B resident unless each of the following conditions is met:

(a) The resident may require skilled nursing care or other services for more than 30 days for an incident, for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as provided for in the facility agreement.

(b) The resident may be consistently and totally dependent in more than four activities of daily living.

(c) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(d) The resident may not be a danger to self or others.

(e) The resident must have a practitioner's written order for admission as a category B resident and written orders for care.

(f) The resident must have a signed health care assessment, renewed on a quarterly basis by a licensed health care professional who:

(i) actually visited the facility within the calendar quarter covered by the assessment;

(ii) has certified that the particular needs of the resident can be adequately met in the facility; and

(iii) has certified that there has been no significant change in health care status that would require another level of care.

(4) An assisted living facility licensed as a category C facility under 50-5-227 may not admit or retain a category C resident unless each of the following conditions is met:

(a) The resident has a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions.

(b) The resident may be at risk for leaving the facility without regard for personal safety.

(c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.

(d) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(5) (a) An assisted living facility licensed as a category D facility under 50-5-227 may be an independent facility or may share a facility with another licensed facility. A category D assisted living facility may not have more than 15 residents.

~~(a) (b)~~ An assisted living facility licensed as a category D facility ~~under 50-5-227~~ may not admit or retain a category D resident unless each of the conditions in subsections ~~(5)(b)~~ ~~(5)(c)~~ and ~~(5)(e)~~ ~~(5)(d)~~ is met or a court has ordered diversion as provided in subsection ~~(5)(d)~~ ~~(5)(f)~~.

~~(b) (c)~~ The resident must be dependent on assistance for two or more activities of daily living and may require skilled nursing care or other services that may be provided or arranged for by either the facility or the resident or provided for in the facility agreement.

~~(e) (d)~~ The resident must be assessed by a practitioner or adjudged by a court as having been or potentially being a danger to self or others. The practitioner shall submit both a health care assessment, renewed on a monthly basis, and a written order for care that:

(i) provides information on behavioral patterns under which the category D resident may pose a threat to others and may need to be kept separate from other category D residents or residents in other categories of assisted care;

(ii) lists the conditions under which the category D resident can be reasonably, temporarily restrained, using protective restraints, medications, or confinement to avoid harm to the resident or others, if the category D assisted living facility elects to use these interventions;

(iii) includes a reason why a category D assisted living facility is more appropriate than other options for care and provides an assessment of the resident's needs and plan for care; and

(iv) indicates the timeframe over which the resident's health care status has remained the same or changed.

(e) A category D assisted living facility is not required to use reasonable, temporary restraints described in subsection (5)(d)(ii) and is not required to have seclusion and restraint rooms if the facility is not going to use the interventions. A category D assisted living facility must receive prior approval of the facility's seclusion and restraint policies before the facility utilizes the interventions.

(d) (f) A court may order a diversion from an involuntary commitment to Montana state hospital or from the Montana mental health nursing care center as provided in 53-21-127 or 53-21-199. A diversion ordered pursuant to 53-21-199 may be an involuntary commitment but must be treated as provided in 53-21-181.

(g) The department shall provide specialized technical assistance to a category D assisted living facility to help the facility meet the evolving needs of the facility's residents and avoid the facility terminating services due to the increased behavioral support needs of the facility's residents.

(h) (i) The department shall develop and maintain a reimbursement model that secures adequate capacity in category D assisted living facilities to allow for sufficient bed space to divert as many people as possible from commitment to the Montana state hospital. The reimbursement model must include enhanced payments for higher acuity needs and higher rates for facilities that provide more individualized or intensive services to fewer than 15 residents.

(ii) By April 1, 2026, the department shall adopt rules and a reimbursement model to implement this subsection (5).

(6) For category B, C, and D residents, the assisted living facility shall specify services that it will provide in the facility admission criteria.

(7) The department shall develop standardized forms and education and training materials to provide to the assisted living facilities and to the licensed health care professionals who are responsible for the signed statements provided for in subsection (3)(f). The use of the standardized forms is voluntary.

(8) The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's practitioner of:

- 1 (i) physical and mental standards for residents of assisted living facilities;
- 2 (ii) requirements for placement in a facility with a higher standard of care if a resident's condition
- 3 deteriorates; and
- 4 (iii) the services offered by the facility and services that a resident may receive from third-party
- 5 providers while the resident lives at the facility;
- 6 (b) standards to be used by a facility and, if appropriate, by a screening agency to screen
- 7 residents and prospective residents to prevent residence by individuals referred to in subsections (3) through
- 8 (5). An individual subject to 46-14-301 is not eligible to be placed in a category D assisted living facility.
- 9 (c) a method by which the results of any screening decision made pursuant to rules established
- 10 under subsection (8)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective
- 11 resident;
- 12 (d) standards for operating a category A assisted living facility, including standards for the physical,
- 13 structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of
- 14 a facility and the storage and administration of over-the-counter and prescription medications;
- 15 (e) standards for operating a category B assisted living facility, which must include the standards
- 16 for a category A assisted living facility and additional standards for assessment of residents, care planning,
- 17 qualifications and training of staff, prevention and care of pressure sores, and incontinence care; and
- 18 (f) standards for operating a category C and a category D assisted living facility, which must
- 19 include the standards for a category B assisted living facility and additional standards for resident assessment,
- 20 the provision of specialty care to residents with cognitive impairments, and additional qualifications of and
- 21 training for the administrator and direct-care staff. The standards for a category D assisted living facility must
- 22 also include specific safety and restraint training."

23

24 **Section 2.** Section 53-21-127, MCA, is amended to read:

25 **"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent

26 is not suffering from a mental disorder or does not require commitment within the meaning of this part, the

27 respondent must be discharged and the petition dismissed.

28 (2) — If it is determined that the respondent is suffering from a mental disorder and requires

commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) — At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) — subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral health inpatient facility for a period of not more than 3 months;

(b) — commit the respondent to a community facility, which may include a category D assisted living facility, or a community program or to any appropriate course of treatment, which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

(i) — not more than 3 months; or

(ii) — not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

(c) — commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months if the following conditions are met:

(i) — the respondent meets the admission criteria of the center as described in 53-21-411 and established in administrative rules of the department; and

(ii) — the superintendent of the center has issued a written authorization specifying a date and time for admission.

(4) — Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) — In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective

1 treatment.

2 (6) — The court may authorize the chief medical officer of a facility or a physician designated by the
3 court to administer appropriate medication involuntarily if the court finds that involuntary medication is
4 necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be
5 involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by
6 the court approves it prior to the beginning of the involuntary administration and unless, if possible, a
7 medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review
8 is not possible, within 5 working days after the beginning of the involuntary administration. The medication
9 review committee must include at least one person who is not an employee of the facility or program. The
10 patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of
11 the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The
12 involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after
13 the beginning of the involuntary administration if medication is still being involuntarily administered. The mental
14 disabilities board of visitors and the director of the department of public health and human services must be
15 fully informed of the matter within 5 working days after the beginning of the involuntary administration. The
16 director shall report to the governor on an annual basis.

17 (7) — Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to
18 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may
19 require commitment only to a community facility, which may include a category D assisted living facility, or a
20 program or an appropriate course of treatment, as provided in subsection (3)(b), and may not require
21 commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing
22 care center.

23 (8) — In ordering commitment pursuant to this section, the court shall make the following findings of
24 fact:

25 (a) — a detailed statement of the facts upon which the court found the respondent to be suffering
26 from a mental disorder and requiring commitment;

27 (b) — the alternatives for treatment that were considered;

28 (c) — the alternatives available for treatment of the respondent;

(d) — the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) — the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) — if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) — if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission;

(h) — if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:

(i) — the respondent meets the admission criteria;

(ii) — there is availability in a category D assisted living facility; and

(iii) — a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

(i) — if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

53-21-127. (Effective July 1, 2025) Posttrial disposition. (1) A respondent must be discharged and the petition dismissed if, upon trial, it is determined that the respondent:

(a) is not suffering from a mental disorder;

(b) does not require commitment within the meaning of this part; or

(c) is suffering from a mental disorder but the respondent's primary diagnosis is Alzheimer's disease, other forms of dementia, or traumatic brain injury and the respondent meets only the commitment criteria outlined in 53-21-126(1)(a) or (1)(d)(i)(B).

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the

1 respondent.

2 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7),
3 the court shall:

4 (a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a
5 behavioral health inpatient facility for a period of not more than 3 months;

6 (b) commit the respondent to a community facility, which may include a category D assisted living
7 facility, or a community program or to any appropriate course of treatment, which may include housing or
8 residential requirements or conditions as provided in 53-21-149, for a period of:

9 (i) not more than 3 months; or

10 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in
11 the community rather than a more restrictive placement in the state hospital if a respondent is committed to a
12 category D assisted living facility as provided in 53-21-199 or if a respondent has been previously involuntarily
13 committed for inpatient treatment in a mental health facility and the court determines that the admission of
14 evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-
15 21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

16 (c) commit the respondent to the Montana mental health nursing care center for a period of not
17 more than 3 months if the following conditions are met:

18 (i) the respondent meets the admission criteria of the center as described in 53-21-411 and
19 established in administrative rules of the department; and

20 (ii) the superintendent of the center has issued a written authorization specifying a date and time
21 for admission.

22 (4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not
23 affect the respondent's custody or course of treatment for a period of more than 3 months.

24 (5) In determining which of the alternatives in subsection (3) to order, the court shall choose the
25 least restrictive alternatives necessary to protect the respondent and the public and to permit effective
26 treatment.

27 (6) The court may authorize the chief medical officer of a facility or a physician designated by the
28 court to administer appropriate medication involuntarily if the court finds that involuntary medication is

1 necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be
2 involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by
3 the court approves it prior to the beginning of the involuntary administration and unless, if possible, a
4 medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review
5 is not possible, within 5 working days after the beginning of the involuntary administration. The medication
6 review committee must include at least one person who is not an employee of the facility or program. The
7 patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of
8 the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The
9 involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after
10 the beginning of the involuntary administration if medication is still being involuntarily administered. The mental
11 disabilities board of visitors and the director of the department of public health and human services must be
12 fully informed of the matter within 5 working days after the beginning of the involuntary administration. The
13 director shall report to the governor on an annual basis.

14 (7) Except as provided in 53-21-126(7), satisfaction of any one of the criteria listed in 53-21-126(1)
15 justifies commitment pursuant to this chapter. However, if the court relies solely on the criterion provided in 53-
16 21-126(1)(d), the court may require commitment only to a community facility, which may include a category D
17 assisted living facility, or a program or an appropriate course of treatment, as provided in subsection (3)(b), and
18 may not require commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental
19 health nursing care center.

20 (8) In ordering commitment pursuant to this section, the court shall make the following findings of
21 fact:

22 (a) a detailed statement of the facts upon which the court found the respondent to be suffering
23 from a mental disorder and requiring commitment;

24 (b) the alternatives for treatment that were considered;

25 (c) the alternatives available for treatment of the respondent;

26 (d) the reason that any treatment alternatives were determined to be unsuitable for the
27 respondent;

28 (e) the name of the facility, program, or individual to be responsible for the management and

supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission;

(h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:

(i) the respondent meets the admission criteria;

(ii) there is availability in a category D assisted living facility; and

(iii) a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

(i) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Section 3. Section 53-21-199, MCA, is amended to read:

**"53-21-199. Option for diversion from involuntary commitment to Montana state hospital --
diversion to category D assisted living facilities.** (1) It is the intent of the legislature to divert individuals from all forms of involuntary commitment. When it is not possible to divert an individual from involuntary commitment, it is the intent of the legislature that commitment to the Montana state hospital serves as a last resort because the Montana state hospital is the most restrictive and least cost-effective form of mental health treatment in the state.

(1) (2) Subject to subsection (3), a person with a mental disorder who is detained or considered for detention under 53-21-120(4) may, upon meeting the requirements in 50-5-226(5), request diversion be diverted to a category D assisted living facility pursuant to the processes outlined in this section.

(3) A court may dismiss involuntary treatment proceedings to facilitate voluntary treatment at a category D assisted living facility if:

(a) the court finds that a person detained or considered for detention under this chapter is likely to

1 benefit from the services of a category D assisted living facility;

2 (b) a category D assisted living facility is willing to serve the person; and

3 (c) the person is willing to receive services from the category D assisted living facility.

4 ~~(2) (4)~~ If voluntary diversion to a category D facility as provided in subsection (3) is not possible and a
5 court, after obtaining the results of an examination as provided in 53-21-123, finds that a short-term inpatient
6 treatment is inappropriate for a person who otherwise is eligible for involuntary commitment to the Montana
7 state hospital, the court may initiate the process necessary to determine eligibility for residency in to divert the
8 person from the Montana state hospital by ordering involuntary commitment to a category D assisted living
9 facility.

10 ~~(3) (5)~~ For a person to be eligible for diversion from the Montana state hospital to a category D
11 assisted living facility pursuant to subsection (4), a court determination and an examination under 53-21-123
12 must indicate that the person:

13 (a) is not suffering acute psychosis; meets the requirements of commitment;

14 (b) is experiencing behavioral patterns that may make the person a danger to self or others; meets
15 the eligibility requirements of 50-5-226; and

16 (c) is dependent on assistance for two or more activities of daily living; and has been approved for
17 admission by a category D assisted living facility.

18 ~~(d) is more likely to benefit from being in a category D assisted living facility than in the Montana~~
19 ~~mental health nursing care center or the Montana state hospital.~~

20 ~~(6)~~ (a) No later than 30 days before the end of a commitment period, the category D assisted living
21 facility that approved a person for admission may provide notice to the court that the facility is no longer able to
22 meet the treatment needs of the person committed to the facility's care.

23 (b) On receipt of the notice from a category D assisted living facility, the court shall initiate the
24 process to determine if the person continues to meet the requirements under subsection (5) for diversion to a
25 category D assisted living facility.

26 (c) If the person meets the requirements for commitment to a category D assisted living facility
27 under subsection (5), but no category D assisted living facility has approved the person for admission, the court
28 may commit the person to the Montana state hospital subject to the provisions of 53-21-127."

1

2 NEW SECTION. SECTION 4. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2029.

3 - END -