

HOUSE BILL NO. 171

INTRODUCED BY D. BEDEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE EDUCATION OF CHILDREN RECEIVING INPATIENT TREATMENT OF EMOTIONAL PROBLEMS; ADDING AND REVISING DEFINITIONS; INCLUDING THERAPEUTIC GROUP HOMES IN THE LIST OF FACILITIES QUALIFYING FOR STATE PAYMENTS; REVISING THE CALCULATION OF STATE FUNDING FOR THE EDUCATIONAL COSTS OF CHILDREN RECEIVING INPATIENT TREATMENT OF EMOTIONAL PROBLEMS; PROVIDING ADDITIONAL DUTIES FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTIONS 20-7-403, 20-7-419, 20-7-435, AND 20-7-436, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and

1 discharging children from those programs;

2 (7) assisting local school districts, institutions, and other agencies in developing full-service
3 programs for a child with a disability;

4 (8) providing technical assistance to district superintendents, principals, teachers, and trustees;

5 (9) conducting conferences, offering advice, and otherwise cooperating with parents and other
6 interested persons;

7 (10) ensuring appropriate training and instructional material for persons appointed as surrogate
8 parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation
9 to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent
10 legal assistance in implementing hearing or appeal procedures;

11 (11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and
12 that each educational program for a child with a disability, including a homeless child with a disability,
13 administered within the state, including each program administered by any other agency, is under the general
14 supervision of the superintendent of public instruction, meets the education standards of the board of public
15 education, and meets the requirements of the superintendent of public instruction, reserving to the other
16 agencies and political subdivisions their full responsibilities for other aspects of the care of children needing
17 special education or for providing or paying for some or all of the costs of a free appropriate public education to
18 a child with a disability within the state;

19 (12) contracting for the delivery of audiological services to those children allowed by Montana law in
20 accordance with policies of the board of public education; and

21 (13) contracting, pursuant to 20-7-435, for the provision of appropriate educational opportunity for a
22 ~~child placed in an in-state residential treatment facility or children's psychiatric hospital receiving in-state~~
23 ~~inpatient treatment of emotional problems~~ AT A QUALIFYING FACILITY, including the provision of a free appropriate
24 public education for a child with a disability."
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26 **Section 2.** Section 20-7-419, MCA, is amended to read:

27 **"20-7-419. Rules.** The superintendent of public instruction shall adopt rules for the implementation of
28 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- 1 (1) the calculation of tuition under 20-7-420;
- 2 (2) the calculation and distribution of funds under 20-7-435; and
- 3 (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment
- 4 facilities, therapeutic group homes, and public schools pursuant to 20-7-435."

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6 **Section 3.** Section 20-7-435, MCA, is amended to read:

7 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-**

8 **state residential treatment programs for eligible children receiving in-state inpatient treatment of**

9 **SERIOUS emotional PROBLEMS DISTURBANCES.** (1) ~~(a)~~ It is the intent of the legislature that eligible children ~~in in-~~

10 ~~state children's psychiatric hospitals and residential treatment facilities receiving inpatient treatment of a serious~~

11 ~~emotional disturbance at in-state qualifying facilities~~ be provided with an appropriate educational opportunity in

12 a cost-effective manner. THE LEGISLATURE FURTHER INTENDS THAT IN-STATE QUALIFYING FACILITIES PRIORITIZE

13 TREATMENT OF MONTANA RESIDENTS OVER RESIDENTS OF OTHER STATES.

14 ~~(b)~~ As used in this section, "appropriate educational opportunity" means:

15 ~~(i)~~ for an eligible child without a disability:

16 ~~(A)~~ if provided by a nonpublic school, an education program provided in accordance with the

17 requirements for a nonpublic school under the provisions of 20-5-109; and

18 ~~(B)~~ if provided by a public school, an education program consistent with accreditation standards

19 provided for in 20-7-111; and

20 ~~(ii)~~ for an eligible child with a disability, a free appropriate public education consistent with state

21 standards for the provision of special education and related services.

22 (2) ~~From appropriations provided for the purposes of this section, the~~ The superintendent of public

23 instruction may contract with ~~an in-state children's psychiatric hospital or residential treatment~~ A QUALIFYING

24 facility for provision of an educational program for an eligible child in the ~~hospital or treatment~~ QUALIFYING

25 facility. ~~The superintendent of public instruction may contract with a therapeutic group home for provision of an~~

26 ~~educational program for an eligible child in the therapeutic group home only if the superintendent of public~~

27 ~~instruction has determined in consultation with the therapeutic group home and the school district in which the~~

28 ~~therapeutic group home is located that eligible children in the therapeutic group home will be provided a more~~

~~appropriate educational opportunity in the therapeutic group home than in the located school district. THE~~
CONTRACT BETWEEN THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND A QUALIFYING FACILITY MUST INCLUDE A
PROVISION REQUIRING THE QUALIFYING FACILITY TO PROVIDE EDUCATIONAL DATA AND REGULAR REPORTS ABOUT THE
ACADEMIC STATUS AND ACADEMIC PROGRESS BEING MADE BY EACH ELIGIBLE CHILD AT A QUALIFYING FACILITY.

(3) (a) Whenever the superintendent of public instruction contracts with ~~an in-state children's~~
~~psychiatric hospital or residential treatment~~ a qualifying facility for provision of an educational program for an
eligible child ~~in the children's psychiatric hospital or residential treatment facility~~, the superintendent of public
instruction shall establish a daily rate per eligible child for each ~~hospital or~~ qualifying facility that reflects actual
documented costs of providing an appropriate educational opportunity at that ~~hospital or~~ facility and that
excludes the cost of services that are eligible for reimbursement under any provision of state or federal law or
an insurance policy ~~not to exceed 100% of the tuition per ANB amount as defined in 20-5-323 divided by 180.~~

(b) For each eligible child and from appropriations provided for the purposes of this section, the
superintendent of public instruction shall pay the ~~hospital or treatment~~ qualifying facility the daily rate under
subsection (3)(a) minus the amount paid under subsection (3)(c).

(c) For each eligible child, the eligible child's school district of residence shall pay the ~~hospital or~~
~~treatment~~ qualifying facility a daily rate of 40% of the tuition per-ANB amount as defined in 20-5-323 divided by
180 in a manner prescribed by the superintendent of public instruction. The district of residence shall finance
the tuition amount from the levy authorized to support the district tuition fund or from the district's general fund
or any other legally available fund in the discretion of the trustees.

(d) An eligible child whose appropriate educational opportunity is provided under subsection (5)(a)
or (5)(b) ~~of this section~~ may not receive funding under this subsection (3).

(e) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the
superintendent of public instruction shall include a request for funding this section based on the daily rate for
each facility as determined under subsection (3)(a). If the money appropriated for the payments to qualifying
facilities under this section is not sufficient, the superintendent of public instruction shall request the state
budget director to submit a request for a supplemental appropriation in the second year of the biennium that is
sufficient to complete the funding of the payments.

(4) A supplemental education fee or tuition, beyond those authorized under this section, may not

be charged for an eligible child who receives an education under contract with an in-state children's psychiatric hospital or residential treatment facility under subsection (3) or as provided under subsection (5).

(5) If ~~a children's psychiatric hospital or residential treatment~~ a qualifying facility fails to provide an appropriate educational opportunity for an eligible child at the ~~children's psychiatric hospital or residential treatment~~ facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall, from appropriations provided for the purposes of this section, choose either of the following two options:

(a) provide for an appropriate educational opportunity for the eligible child utilizing qualified specialists who are employees of the office of public instruction or under contract with the office of public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance the reimbursement from the levy authorized to support the district tuition fund.

(b) negotiate with the school district in which the ~~children's psychiatric hospital or residential treatment~~ qualifying facility is located for the supervision and implementation of an appropriate educational opportunity for eligible children attending the ~~children's psychiatric hospital or residential treatment~~ facility. The amount to be paid to the district of attendance by the office of public instruction and the amount to be paid by the eligible child's district of residence are determined as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d) and (1)(e).

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(7) The superintendent of public instruction may distribute funds appropriated for contracts with in-state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school districts for the purpose of supporting educational programs for children with significant behavioral or physical needs.

(8) The superintendent of public instruction shall report to the education interim budget committee AND THE EDUCATION INTERIM COMMITTEE in accordance with 5-11-210 no later than September 30 of even-numbered years on the implementation of this section and an analysis that supports each daily rate. The report must include:

(a) the daily rate calculated for each qualifying facility as described in subsection (3)(a); AND

(b) an evaluation of education programs at qualifying facilities funded under this section; and

(c) an explanation for how the determination regarding therapeutic group homes under subsection (2) was made."

Section 4. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) "Appropriate educational opportunity" means:

(a) for an eligible child without a disability:

(i) if provided by a nonpublic school, an education program provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109; and

(ii) if provided by a public school, an education program consistent with accreditation standards provided for in 20-7-111; and

(b) for an eligible child with a disability, a free appropriate public education consistent with state standards for the provision of special education and related services.

~~(1)(2)~~ (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

~~(2)(3)~~ "Eligible child" means a Montana resident child or youth who is less than 19 years of age ON SEPTEMBER 10 OF THE SCHOOL YEAR and who has an emotional problem a serious emotional disturbance that is

so severe that the child or youth has been placed in ~~a children's psychiatric hospital or residential treatment a~~
qualifying facility for inpatient treatment of emotional problems.

(4) "Qualifying facility" means a children's psychiatric hospital, a residential treatment facility, or a
therapeutic group home located in Montana.

~~(3)(5)~~ (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with serious emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under
21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing
psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections ~~(3)(5)(a)(iii)~~ and ~~(3)(5)(a)(iv)~~, has received a
certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part
3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical
dependency is the primary reason for treatment.

(6) "Therapeutic group home" means an in-state treatment facility providing therapeutic services
licensed and under contract with the department of public health and human services as a youth care facility, as
defined in 52-2-602."

COORDINATION SECTION. Section 5. Coordination instruction. If House Bill No. 110 is not
passed and approved, then the reference to the education interim budget committee in subsection (8) of 20-7-
435 of [this act] must be changed to the legislative finance committee.

NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2023.

NEW SECTION. Section 7. Applicability. [This act] applies to school years and years of attendance
beginning on or after July 1, 2023.

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