

HJR 16: State-Operated Institutions ***Overarching Issues Among State Institutions***

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Background

Several state-operated institutions serve Montanans who have a mental illness, an intellectual disability, a chemical dependency, or a combination of those conditions. House Joint Resolution 16, approved by the 2013 Legislature, calls for a study of those institutions to determine if changes to the system of facilities could result in more effective treatment.

The Department of Public Health and Human Services (DPHHS) operates four of the facilities specified in the study resolution: the Montana Chemical Dependency Center in Butte, Montana Developmental Center in Boulder, Montana State Hospital at Warm Springs, and Montana Mental Health Nursing Care Center in Lewistown. The Department of Corrections (DOC) operates the two other institutions specified in the resolution: the Montana State Prison at Deer Lodge and the Montana Women's Prison in Billings.

Individuals come to those institutions through different means and for different reasons. But at least some of the individuals served by each of the institutions have mental health disorders that require similar treatment. As a result, the Children, Families, Health, and Human Services Interim Committee decided to focus its study on services provided at those institutions to individuals with mental health needs.

This paper focuses on aspects of services that are common to some or all of the facilities.

Independent Oversight

During the deinstitutionalization movement that swept the country in the 1970s, Montana moved hundreds of mentally ill and developmentally disabled individuals out of its institutions. At the same time, the Legislature created the Mental Disabilities Board of Visitors to review the treatment and services provided to developmentally disabled and mentally ill Montanans.

The board is made up of six individuals appointed by the governor and representing a mix of developmental disabilities (DD) and mental health professionals and consumers of DD and mental health services. The board's duties include:

- investigating cases of alleged mistreatment of a resident;
- inspecting the premises and records of the Montana Developmental Center and of both state-run and state-licensed mental health centers and residential treatment facilities;
- inspecting patient files to ensure that appropriate treatment plans are being followed;

- helping patients resolve grievances involving the person's care and treatment;
- reviewing any plans for experimental research or hazardous treatment; and
- publishing reports of the board's activities and inspections. The reports are online at <http://boardofvisitors.mt.gov/default.mcp.x>.

The board's oversight authority covers three of the state-operated institutions included in the HJR 16 study: the Montana Developmental Center, Montana State Hospital, and Mental Health Nursing Care Center. In addition, it reviews services at more than 40 privately operated hospital psychiatric units and mental health facilities treating both adults and children.

The board does not have statutory authority to review correctional facilities or programs.

Moving Between the Institutions

State law provides several methods for moving people between certain state-operated institutions and programs if the situation warrants. Both DOC and DPHHS have the authority to adopt rules for transferring people in their programs, within certain limits. Other specific transfers allowed under law include the transfer of:

- a Montana Developmental Center resident to a hospital or medical facility for medical treatment and to a mental health facility — including the Montana State Hospital or Mental Health Nursing Care Center — if procedures for an emergency detention are followed (53-20-127, MCA);
- a person in DOC custody to Montana State Hospital for up to 10 days (53-21-130, MCA);
- a Mental Health Nursing Care Center patient to Montana State Hospital if the patient needs the intensive treatment available at the state hospital (53-21-413, MCA); and
- a Montana State Hospital patient to the Mental Health Nursing Care Center if the patient meets admissions criteria (53-21-414, MCA).

All of the state-operated facilities have made transfers in accordance with these laws and with procedures they've established for the transfers.

The Montana State Hospital and Montana Developmental Center also may transfer "forensic" patients — those who have been criminally committed to the hospital — to a DOC program or facility or to another mental health program or facility. However, the transfer must be approved by a Forensic Review Board and the facility administrator. Each facility has a five-member review board that includes the administrator and medical director of the facility. The boards make recommendations to the DPHHS director.

A forensic patient at either facility may be transferred to a correctional facility on an emergency basis without a review by the board, if both the DPHHS and DOC directors agree. In those instances, the appropriate Forensic Review Board will review the transfer after it has occurred.

People in DOC custody who are serving their sentences in a community setting or a secure facility other than Montana State Prison or the Montana Women's Prison may be transferred to either prison under various circumstances. Those range from a need for medical or mental health care to an offender's own decision to leave a community program or a decision by a program or facility the person cannot be effectively served there because the placement isn't suitable or appropriate services don't exist. A person also may be transferred from any program or facility to one of the prisons because of disciplinary problems.

Moving from an Institution to the Community

The institutions have different processes for returning individuals to the community. As a result, some individuals may leave facilities before treatment is complete or without appropriate services in the community, while others may remain at a facility longer than necessary.

Key differences include:

- Patients who have voluntarily entered treatment at the Montana Chemical Dependency Center may leave before they have completed treatment. If they do, appropriate community services may not be scheduled for them.
- Patients who have been involuntarily committed to the Montana State Hospital may leave only when a physician determines that treatment has been completed or a judge orders that the person be discharged.
- Montana Developmental Center residents may not leave the facility until appropriate community placements have been arranged. That means some residents may remain at the institution even after commitment orders have expired because they have not yet been accepted into community-based services. Community DD providers can decline to serve individuals who are at the facility.
- Inmates at the two prisons leave when they have completed their sentences or been paroled. The Montana State Prison provides discharge planning for mental health treatment only for inmates who have the equivalent of a diagnosis of severe disabling mental illness that is generally needed to obtain state-funded mental health services upon release.

Obtaining State-Funded Mental Health Services in the Community

Each of the institutions provides mental health services to clients with identified mental health needs. But in some instances, the individuals receiving those services would not qualify for publicly funded mental health services in the community because they don't meet the eligibility criteria for Medicaid or the state-funded Mental Health Services Plan (MHSP).

Individuals who aren't eligible for Medicaid may qualify for MHSP-funded services in the community if they:

- have an income at or below 150 percent of the federal poverty level; and
- have a severe disabling mental illness (SDMI).

SDMI criteria are spelled out in administrative rule and involve a multi-part determination. To meet the criteria, a person first must:

- have been involuntarily hospitalized for at least 30 consecutive days at Montana State Hospital;
- have been diagnosed with one of several specific psychotic, mood, personality, or post-traumatic stress disorders; or
- have recurrent thoughts of death, have attempted suicide, or have developed a plan for committing suicide.

In addition, the person must have experienced ongoing functional difficulties for at least six months because of mental illness, as exhibited by any two of the following conditions:

- The person is prescribed medication to control the symptoms of mental illness.
- The person is unable to work in a full-time competitive situation.
- The person is determined by the Social Security Administration to be disabled.
- The person is homeless, at risk of homelessness, or is able to maintain a living arrangement only with ongoing supervision.
- The person has had or will predictably have repeated episodes in which the mental illness worsens.

Some of the people who are receiving mental health services in the state-operated institutions will not meet Medicaid or SDMI eligibility standards. Thus they are unlikely to qualify for community-based mental health services after they leave the institution.

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Sources:

- Website for the Mental Disabilities Board of Visitors, www.boardofvisitors.mt.gov
- 2-15-211 and Title 53, Chapters 20 and 21, Montana Code Annotated
- 37.86.3503, Administrative Rules of Montana, Severe Disabling Mental Illness, Department of Public Health and Human Services
- "Forensic Review Board," Montana State Hospital Policy FP-01, Feb. 28, 2011
- Forensic Review Board policy, Montana Developmental Center Policy ATD 404.1, Sept. 10, 2010
- "Administrative Transfers/Overrides," Department of Corrections Procedure ACCD 4.6.200, June 25, 2013
- "Contract Placement Bureau Operations," Montana State Prison Policy MSP4.8.100, June 1, 2003