

# Montana

## Constitutional Provisions

Montana's constitution requires the state to establish and support such “institutions and facilities as the public good may require . . .” Article XII, § 3. The state need only provide, however, such economic, social and rehabilitative assistance as it so desires to classes of individuals for whom the state deems eligible. Article XII, §§ 3,4.

## Statutory Obligations

### State Obligation

The state's Department of Public Health & Human Services is required to use the state government's resources “to maximum efficiency” to provide mental health and chemical dependency services, care for developmentally disabled state residents who have been institutionalized, and nursing home care for honorably discharged veterans.<sup>1</sup>

### County Obligation

The administrative and financial responsibility for public assistance rests with those counties not opting to transfer public assistance responsibility<sup>2</sup> along with specified tax revenues to the state department of Public Health & Human Services.<sup>3</sup> Each county's board of commissioners is authorized to establish a poor fund for the provision of public assistance, and to do so by levying a tax of up to 13.5 mills, and an additional 12 mills if approved by the county's voters.<sup>4</sup>

A county may opt to provide food, clothing, shelter, transportation, and medical assistance for financially needy individuals ineligible for state and federal programs providing similar assistance.<sup>5</sup> A county having such a program may control the eligibility requirements, the scope and duration of services.<sup>6</sup> The county

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<sup>1</sup>Montana Code Ann. § 53-1-601. (Hereinafter, all code sections refer to Montana Code Annotated, unless otherwise indicated).

<sup>2</sup>Transfer of county public assistance: Montana Code Ann. §§ 53-2-811, 53-2-812, 53-2-813.

<sup>3</sup> § 53-2-306.

<sup>4</sup> § 53-2-322.

<sup>5</sup> § 53-2-804

<sup>6</sup> § 53-2-804.

may fund this program through its poor fund.<sup>7</sup>

This voluntary county program is a type of in-kind general assistance. The state legislature, however, repealed its general relief statute (Chapter 3, Title 53), leaving general assistance to counties so desiring to provide it.<sup>8</sup> It is unlikely, therefore, that the county can exercise its option to transfer its public assistance obligations to the state department of public health and human services under the program that allows for such transfers in exchange for the transfer of 9 mills of tax points.<sup>9</sup>

### **Categorical Programs**

#### **Displaced Homemakers**

The legislature “intends” to help displaced homemakers achieve independence by providing them with counseling, health care and other services.<sup>10</sup> A displaced homemaker is an adult who has not developed employable skills because she or he has been the home and family care-giver.<sup>11</sup> An unemployed, or underemployed, parent whose youngest dependent will be losing AFDC benefits within 2 years is also a displaced homemaker.<sup>12</sup>

The state is financially responsible to whatever extent the word “intends” has. Counties are financially responsible for 15% of the cost of this program, and may fulfill their obligations by providing in-kind services. The program may also collect funds from any other public or private agency.

#### **Traumatic Brain Injury Trust Fund**

Individuals suffering from certain forms of brain injury, such as cerebral vascular accidents, atherosclerosis, tumors, and so on, as delineated in section 53-6-501, may be eligible for services funded through the trust account established under section 53-6-502.

#### **Vocational Rehabilitation**

Mandated by the federal Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*) this program provides counseling, diagnostic and placement services to those persons with employment handicaps who could become employable if provided with such assistance.<sup>13</sup> The department must also provide other necessary

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<sup>7</sup> § 53-2-804(b)(4).

<sup>8</sup> § 53-3-115.

<sup>9</sup> §§ 53-2-801, 802, 811-813.

<sup>10</sup> §§ 39-7-302, 305.

<sup>11</sup> § 39-7-303.

<sup>12</sup> *Id.*

<sup>13</sup> §§ 53-7-105, 108(2).

rehabilitation services if the applicant meets certain financial criteria.<sup>14</sup> Those individuals who are characterized as being blind, per 53-7-301, are eligible for services under a comparable program.<sup>15</sup>

### **Residential & Voc-Rehab Assistance**

Individuals with disabilities of such severity that in order to secure and maintain employment they would need intensive vocational and rehabilitative services<sup>16</sup> are eligible for residential<sup>17</sup> and vocational and rehabilitative services to the extent of available appropriated state funds.<sup>18</sup> Unlike sections 53-7-103 and 53-7-110, described immediately above, this section does not seem to impose any financial eligibility criteria.

### **Sheltered Workshops**

This program dovetails with 53-19-101 *et seq.* To the extent that funds are available<sup>19</sup>, a person with a physical or mental impairment that seriously limits his or her employment capacity may be eligible for a variety of supportive services not necessarily available through vocational rehabilitation programs.<sup>20</sup>

### **Developmental Disabilities**

The department of public health and human services must use “to maximum efficiency the resources of state government . . .” to provide inpatient institutional care for persons with developmental disabilities who require such care.<sup>21</sup> In order to fulfill its obligation to provide mental health services the department must operate the Montana Developmental Center and the Eastmont Human Services Center.<sup>22</sup> A state institution may not be moved, discontinued, or abandoned without the consent of the legislature.<sup>23</sup>

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<sup>14</sup> § 53-7-108(3).

<sup>15</sup> § 53-7-310.

<sup>16</sup> § 53-19-106.

<sup>17</sup> § 53-19-110.

<sup>18</sup> § 53-19-103.

<sup>19</sup> § 53-7-203.

<sup>20</sup> §§ 53-7-202, 205.

<sup>21</sup> § 53-1-601.

<sup>22</sup> § 53-1-602(c).

<sup>23</sup> § 53-1-602.

Any person suspected of having a developmental disability shall be eligible for a screening evaluation.<sup>24</sup> A person found to have a developmental disability is entitled to a spectrum of services provided by the state.<sup>25</sup>

### **Residential Facility for the Severely Mentally Retarded**

The primary purpose of the Montana Developmental Center and the Eastmont Human Services Center is to provide care, treatment, training, education, and necessary medical treatment of mentally retarded persons.<sup>26</sup>

### **Mental Illness**

#### **Overriding Obligation**

The department of public health and human services must use “to maximum efficiency the resources of state government . . .” to develop and maintain comprehensive services and programs in the field of mental health.<sup>27</sup> The department is responsible for Montana's state hospital and mental health nursing care center, and for community mental health services outlined below and as found in 53-21-2. No state institution may be moved, closed, or abandoned without the consent of the legislature.<sup>28</sup>

#### **Community Mental Health Centers:**

The community mental health center is at the heart of a mental health system. A basic mental health center provides services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.<sup>29</sup>

A “community mental health center,” as defined by the federal Community Mental Health Centers Act, requires a mental health center to provide the following array of services to the public<sup>30</sup>:

- (a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

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<sup>24</sup> § 53-20-209.

<sup>25</sup> § 53-20-209(2). *See* 53-20-101, *et seq.*

<sup>26</sup> § 53-20-501.

<sup>27</sup> § 53-1-601.

<sup>28</sup> § 53-1-602(2).

<sup>29</sup> § 50-5-101(29).

<sup>30</sup> § 53-21-201(1).

- (b) 24-hour-a-day emergency mental health services
- (c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;
- (d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission, and;
- (e) consultation and education in mental health.

### **Individual's Right to Mental Health Care**

The department has a general obligation to provide mental health services under 53-1-601, and may not base eligibility for services on ability to pay.<sup>31</sup> In fact, anyone “who may be seriously mentally ill or suffering from a mental disorder [is] entitled to such care and treatment as will be suited to the needs of the person ...”<sup>32</sup> The extent of this right is determined by how narrowly the terms, “seriously mentally ill” and “mental disorder” are construed.

### **Funding**

Under 53-21-202(5) the department is authorized to receive funds from federal, state and other sources for the development of mental health services within the state. Local entities within the state's mental health regions are also authorized to receive funds from any source for the provision of community mental health services.<sup>33</sup> Apart from this language, however, there is no indication that funding for community mental health services will or can be adequate.

### **Financial Responsibility for Services Rendered**

Institutionalization costs may be another matter, however. The costs of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county in which the patient resides at the time of admission.<sup>34</sup> The cost of the examination, committal, and transporting a person who is seriously mentally ill to a mental health facility must be paid by the county in which the patient resides at the time she or he is adjudged to be seriously mentally ill.<sup>35</sup>

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<sup>31</sup> § 53-21-206.

<sup>32</sup> § 53-21-101(1).

<sup>33</sup> § 53-21-204(5)(d).

<sup>34</sup> § 53-21-113.

<sup>35</sup> § 53-21-132(1).

**End-Stage-Renal-Disease (ESRD)**

To the extent that appropriated funds are available, and the applicant is financially needy, the department of public health and human services must provide dialysis and other medical procedures and techniques that may have a lifesaving effect in the care and treatment of persons suffering from chronic renal disease.<sup>36</sup> The department must also provide medical, nursing, pharmaceutical, and technical services necessary to care for the disease, including the rental or purchase of home dialysis equipment and supplies.<sup>37</sup>

**Public Hospitals**

The board of county commissioners has the authority to erect and maintain public hospitals.<sup>38</sup> The board may finance this through levying taxes and issuing bonds.<sup>39</sup> Public hospitals must admit indigents needing hospital services, “for the rendition of which provision is made by the laws of Montana, on terms and rates prescribed or authorized by law.”<sup>40</sup>

What is the hospital required to do? Montana's constitution requires the state to meet the needs of designated classes of citizens by appropriately supporting, or creating, “institutions and facilities.”<sup>41</sup> There is no general mandate to meet the general medical needs of the poor, however. It appears that under 7-34-2123 the public hospitals may have quite limited indigent care obligations.

**Services for Seniors**

Subject to available funding, the department of public health and human services, in conjunction with other public and private agencies, must identify and provide to those aged 60 years and older, physical and mental health care, including inpatient and outpatient services, screening, appliances/supplies, and home health care<sup>42</sup>; appropriate placement in adult day, foster, personal, or supervisory care, and nursing homes<sup>43</sup>; transportation that provides access to services<sup>44</sup>; housing, nutrition, education, homemaker,

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<sup>36</sup> § 50-44-101, 102.

<sup>37</sup> *Id.*

<sup>38</sup> §§ 7-34-2101, 2201.

<sup>39</sup> §§ 7-34-2122, 2131, 2133.

<sup>40</sup> § 7-34-2123.

<sup>41</sup> Montana Constitution Article XII, §§ 3,4.

<sup>42</sup> § 52-3-504(4).

<sup>43</sup> § 52-3-504(5).

<sup>44</sup> § 52-3-504(2).

escort, respite, hospice, and other programs that facilitate self-care<sup>45</sup>; and more.<sup>46</sup>

### **Tuberculosis Diagnostic and Treatment Services**

There is no general right to tuberculosis (TB) treatment. However, the state has a general policy of protecting the public from TB by “provid[ing] and maintain[ing] a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease.”<sup>47</sup> The department of public health and human services, which is charged with implementing this policy, may draw down federal TB control funds.<sup>48</sup> Like other department projects, however, it is unclear whether this mandate is funded.

The department has the authority to obtain a court order to require individuals suspected of having active TB, or having been exposed to it, to submit to examination, and if necessary treatment.<sup>49</sup> It is probable that the state is responsible to provide or pay for these services. In cases where an individual is committed to a hospital for treatment the county from which the person is committed is financially responsible.<sup>50</sup> The county may voluntarily pay for communicable disease services in cases not involving commitment.<sup>51</sup> Neither the department nor the county are obligated, however, to provide or finance examinations or treatment for those individuals who are not judicially compelled to submit to examination and treatment.<sup>52</sup>

### **Sexually Transmitted Diseases (STDs), Incl. HIV/AIDS**

The department of public health and human services is required to control STDs, including, human immunodeficiency virus (HIV).<sup>53</sup> The department has the power to examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease, and to require persons infected to be treated, “which may be at public expense” until cured.<sup>54</sup>

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<sup>45</sup> § 52-3-504(3).

<sup>46</sup> *See generally* 52-3-501, *et seq.*

<sup>47</sup> § 50-17-101.

<sup>48</sup> § 50-17-103.

<sup>49</sup> § 50-17-05.

<sup>50</sup> § 50-17-114.

<sup>51</sup> § 50-2-116(2)(c).

<sup>52</sup> *See generally* 50-17-101, *et seq.*

<sup>53</sup> §§ 50-18-101, 50-18-102.

<sup>54</sup> § 50-18-107.

As with the treatment of TB patients involuntarily subjected to examination and treatment under 50-17, the department probably must pay for the examination and treatment of those individuals compelled to submit to diagnosis and/or treatment.<sup>55</sup> County health boards are given the discretion to pay for communicable disease services. It is unclear whether they must pay when those services are compelled by the department.<sup>56</sup>

A key question is whether HIV/AIDS drug therapies might be paid for by the department. The department is financially obligated where it compels an individual to submit to examination and treatment.<sup>57</sup> The department's general financial obligations with respect to treatment of STD is not as clear. It has the duty to prevent, control and "prescribe" treatment for STDs, and is authorized to pull down federal funds for those purposes.<sup>58</sup> To what extent, if any, is the department obligated to pay for HIV/AIDS drug therapies, which arguably abate the effects of the disease, not its infectivity?

This statute might be construed as limiting the department's financial obligation to only paying for treatment relating to the infectivity of the disease. That construction might limit whatever obligation the department might have to treat or pay for the treatment of people with AIDS, or HIV. In the case of the treatment of HIV or AIDS, expensive classes of drugs such as protease inhibitors and CD-4 promoters (interleukin-2) are used to abate the effect of the disease, not necessarily the infectivity. Since these drug therapies might not be reducing the infectivity of the disease, the department might argue that it has no obligation to fund them.

### **Prenatal Program**

Under the Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act, title 50, chapter 19, all pregnant women whose family incomes do not exceed the federal poverty line shall receive assistance in gaining access to perinatal care and related support services. 50-19-311. Funding for this program is through Medicaid and the federal Maternal and Child Health Services Block Grant Act, PL 97-35.

### **Drug and Alcohol Abuse (DAA) Treatment**

The department of public health and human services must establish a comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons and their family members.<sup>59</sup> The program must provide appropriate immediate and long-term care treatment and follow-up in both inpatient and outpatient settings.<sup>60</sup> Chapter 24 provides for voluntary, as well as involuntary

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<sup>55</sup> §§ 50-17-05, 114.

<sup>56</sup> § 50-2-116(2)(c).

<sup>57</sup> §§ 50-17-05, 50-18-107.

<sup>58</sup> §§ 50-18-101,102.

<sup>59</sup> § 53-24-207(1).

<sup>60</sup> § 53-24-207(2).

enrollment for chemical and alcohol abuse problems.<sup>61</sup> The department is authorized to fund DAA programs through public and private grants, and to the extent that the legislature allows, beer, wine and liquor tax revenue.<sup>62</sup>

The program's funding sources are not immediately apparent. Nor is it clear whether the service is provided without regard to need, on a fee-for-service basis, or on an ability-to-pay scale.

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<sup>61</sup> §§ 53-24-301, 302.

<sup>62</sup> § 53-24-206.