

SENATE BILL NO. 125

INTRODUCED BY M. DUNWELL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES; REQUIRING WRITTEN POLICIES AND PROCEDURES TO ENSURE HEALTH AND SAFETY; REQUIRING A PUBLIC COMMENT PERIOD ON LICENSE APPLICATIONS; PROVIDING FOR A COMPLAINT PROCESS WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR ALLEGED VIOLATIONS OF APPROVED POLICIES AND PROCEDURES OR WHEN POLICIES AND PROCEDURES ARE ALLEGED TO BE INSUFFICIENT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-20-305, MCA."

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

Section 1. Section 53-20-305, MCA, is amended to read:

"53-20-305. Local control of community homes -- departmental licensing, administration, operation, health, and safety standards -- rulemaking. (1) Community homes for persons with developmental disabilities may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for persons with developmental disabilities must be licensed annually by the department of public health and human services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) The department of public health and human services for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for persons with developmental disabilities. These rules must include requirements to ensure the health and safety of the residents and the community in which the community home is located, including:

(a) guidelines for policies and procedures of the licensed program, including policies and

1 procedures to prevent the illegal trespass of residents onto neighboring properties, which may include setback
2 from neighboring residences, fencing, or additional staffing;

3 (b) a procedure for the department to review and approve the community home's policies and
4 procedures based on an individualized assessment of the location and unique needs of the community home
5 and consideration of the submitted public comment under subsection (4); and

6 (c) a procedure for submitting a complaint pursuant to [section 2] about a licensed community
7 home to the department.

8 (4) Prior to the grant of a license under this section, the department shall provide written notice on
9 its website and to all landowners within one-half mile of the proposed community home that it has received an
10 application for a license for a community home. The department shall allow at least 28 days from the date of the
11 notice for the public to submit comments regarding the proposed policies and procedures of the community
12 home.

13 (5) The department shall keep copies of the approved policies and procedures under subsection
14 (3) on file and provide them to a member of the public on request."

15
16 **NEW SECTION. Section 2. Complaint -- informal investigation -- conciliation -- findings.** (1) A
17 person who claims to be aggrieved by the failure of a community home to follow its approved policies and
18 procedures under 53-20-305 or who claims that the policies and procedures approved by the department under
19 53-20-305 are insufficient to prevent an injury suffered by the person may file a complaint with the department.

20 (2) The department shall informally investigate the matters set out in the complaint promptly and
21 impartially to determine whether there is reasonable cause to believe that the allegations are supported by a
22 preponderance of the evidence.

23 (a) During the informal investigation process and before the department issues a finding under
24 subsection (6), the department may attempt to resolve the complaint by mediation.

25 (b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time
26 period for the department to complete the informal investigation and issue a finding under subsection (6) may
27 be extended up to 45 days.

28 (c) If the department makes a finding under subsection (6)(c) that there is reasonable cause to

1 believe that the community home failed to follow its policies and procedures pursuant to 53-20-305 or that the
2 policies and procedures are insufficient, the department shall attempt to resolve the complaint by conciliation in
3 a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the violation
4 of policies and procedures or address the insufficiency found in the investigation.

5 (3) The department shall, within 10 business days following receipt of a filed complaint, notify the
6 community home that it is the subject of a filed complaint. The notification must be in writing and must include a
7 copy of the filed complaint.

8 (4) The community home shall file an answer to the complaint filed with the department within 10
9 business days of the community home's receipt of the complaint. The community home's answer may be a
10 response simply admitting or denying the allegations without further specificity or requesting additional
11 information from the department. The time for filing an answer may be extended by a showing of good cause.

12 (5) The department shall commence proceedings within 30 days after receipt of a complaint.

13 (6) (a) After the informal investigation, the department shall issue a finding on whether there is
14 reasonable cause to believe that a preponderance of the evidence supports the charging party's allegations.
15 Unless the time period is extended as provided in subsection (2)(b), the finding must be issued within 180 days
16 after the complaint is filed.

17 (b) If the department finds that there is no reasonable cause to believe that a violation occurred or
18 that the policies and procedures are insufficient, it shall issue a notice of dismissal and dismiss the case from
19 the department's administrative process. After receipt of a notice of dismissal, a charging party may discontinue
20 the administrative process and commence proceedings in district court as provided in [section 6].

21 (c) If the department finds that there is reasonable cause to believe that a violation occurred or
22 that the policies or procedures are insufficient and conciliation efforts are unsuccessful, the department shall
23 certify the complaint for hearing pursuant to [section 3].
24

25 **NEW SECTION. Section 3. Contested case hearing.** (1) The department shall hold a contested
26 case hearing on a complaint that is certified for hearing under [section 2] or that is remanded for hearing by a
27 reviewing court. The department shall serve notice of the hearing and a copy of the complaint on the parties.

28 (2) If the parties mutually agree to extend the time for hearing beyond 12 months after the

1 complaint is filed, then the parties shall stipulate to a schedule for proceedings to be established by the
2 department. The department shall, not later than 395 days after the complaint was filed, set a date for an
3 administrative hearing in the case in accordance with the stipulated schedule. After a hearing date is set, the
4 department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good
5 cause.

6 (3) (a) The hearing must be held by the department in the county where the unlawful conduct is
7 alleged to have occurred unless a party requests and is granted a change of venue for good cause shown. The
8 case in support of the complaint may be presented before the department by the charging party or an attorney
9 representing the charging party. The hearing must be held in accordance with the applicable portions of the
10 Montana Rules of Civil Procedure.

11 (b) Upon request of the hearings officer, the department may present evidence with regard to
12 activity conducted. However, the department may not represent either party in a contested case hearing.

13 (c) If the case is not settled, fully decided on order or motion, or otherwise resolved, the hearings
14 officer shall hold a hearing and issue a decision.

15 (4) All hearings conducted under this section may, upon stipulation of the parties, be heard
16 telephonically or through two-way electronic audio-video communication.

17 (5) The department or the commission may make provisions for defraying the expenses of an
18 indigent party in a hearing held pursuant to this chapter.

19 (6) The prevailing party in a hearing under this section may bring an action in district court for
20 attorney fees and costs. The court in its discretion may allow the prevailing party reasonable attorney fees and
21 costs. An action under this section must comply with the Montana Rules of Civil Procedure.

22 (7) Within 30 days after a decision in writing issued under subsection (3), a party may petition a
23 district court for judicial review of the final agency decision as provided in 2-4-702.

24
25 **NEW SECTION. Section 4. Procedure on decision finding violation.** (1) If the hearings officer
26 finds that a party against whom a complaint was filed has violated its policies and procedures or the policies
27 and procedures were insufficient as alleged in the complaint, the department shall order the party to refrain
28 from engaging in the violating conduct or to revise its policies and procedures. The order may:

1 (a) prescribe conditions on the accused's license relevant to the violations and injuries found by
2 the hearings officer;

3 (b) require any reasonable measure to correct the violations and to rectify a harm, pecuniary or
4 otherwise, to the person who filed the complaint;

5 (c) require a report on the manner of compliance; or

6 (d) suspend or revoke the community home's license.

7 (2) The order may not require the payment of punitive damages.

8 (3) Whenever an order or conciliation agreement requires inspection by the department for a
9 period of time to determine whether the community home is complying with that order or agreement, the period
10 of time may not be more than 1 year.

11
12 **NEW SECTION. Section 5. Enforcement of department order or conciliation agreement.** If the
13 order issued under [section 4] is not obeyed, the department shall revoke the community home's license. The
14 department or a party may petition the district court in the county where the violation occurred or in which the
15 community home is located or transacts business to enforce the department's order by an appropriate order.
16 The department or a party may also commence a civil action in an appropriate district court for relief for a
17 breach of a conciliation agreement.

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19 **NEW SECTION. Section 6. Dismissal after informal proceedings -- action in district court.** (1)
20 Within 90 days after the department has issued a notice of dismissal pursuant to [section 2(6)(b)], the charging
21 party may commence a civil action for appropriate relief on the merits of the case in the district court in the
22 district in which the alleged violation occurred.

23 (2) If the charging party fails to commence the civil action in the district court within 90 days after
24 the final agency decision has been issued, the claim is barred.

25 (3) The court may provide the same relief as described in [section 4]. In addition, the court may in
26 its discretion allow the prevailing party reasonable attorney fees and costs.

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28 **NEW SECTION. Section 7. Codification instruction.** [Sections 2 through 6] are intended to be

- 1 codified as an integral part of Title 53, chapter 20, part 3, and the provisions of Title 53, chapter 20, part 3,
- 2 apply to [sections 2 through 6].

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