



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: SB0524.01: Revise laws relating to category D assisted living facilities

Primary Sponsor: Dennis Lenz Status: As Introduced

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact

☐ Significant Long-Term Impacts ☒ Technical Concerns ☐ Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<b>Expenditures</b>				
General Fund (01)	\$665,477	\$5,176,159	\$5,176,159	\$5,176,159
Federal Special Revenue (03)	\$326,865	\$2,418,615	\$2,418,615	\$2,418,615
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$326,865	\$2,418,615	\$2,418,615	\$2,418,615
<b>Net Impact</b>	<u>(\$665,477)</u>	<u>(\$5,176,159)</u>	<u>(\$5,176,159)</u>	<u>(\$5,176,159)</u>
<b>General Fund Balance</b>				

### Description of fiscal impact

SB 524 directs the Department of Public Health and Human Services to revise laws relating to category D assisted living facilities providing clarification on use of seclusion, chemical restraints, or physical restraints and providing for individuals who would otherwise be committed to the Montana State Hospital to be diverted to a category D Assisted Living Facility.

### FISCAL ANALYSIS

#### Assumptions

#### Department of Public Health and Human Services (department)

1. Section 1(5) (h) (ii) states that the department shall adopt rules and a reimbursement model by April 1, 2026. For the purposes of this fiscal note, the department assumes individuals would begin to be placed into a category D ALF starting on April 1, 2026.
2. For the purpose of this fiscal note, it is assumed that 50% of the commitments to category D Assisted Living Facility (ALF)s will be voluntary and 50% of the commitments will be involuntary. Involuntary commitments are not Medicaid reimbursable so those would be funded with 100% general fund. The 50% of commitments who are voluntary are assumed to be funded with the standard Medicaid Federal Medical Assistance Percentage (FMAP). The standard FMAP is assumed to be 38.39% general fund, 61.61% federal funds in FY26, and 38.53% general fund, 61.47% federal funds in FY27. Federal match is dependent on Centers for Medicare & Medicaid Services (CMS) approval of the waiver amendments (see technical notes #1-6).
3. It is assumed a category D assisted living bed would be paid at a daily rate of \$334.26. This is based on the current Severe Disabling Mental Illness (SDMI) intensive care group home rate.

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*(continued)*

4. It is assumed that in the first year, 30 individuals would be placed in a category D ALF. Of these 30, 20 would be on the Big Sky Waiver (BSW) and 10 would be on the SDMI waiver.
5. It is assumed in the second year an additional 30 individuals would be placed in a category D ALF making a total of 60 individuals in category D ALFs. Forty of these individuals would be on BSW and 20 would be on the SDMI waiver.

The table below shows the total cost of the category D ALF bed days for BSW and SDMI individuals.

50% involuntarily committed		2026=90 days	2027	2028	2029
DailyRate	\$	334.26	\$ 334.26	\$ 334.26	\$ 334.26
# people		15	30	30	30
Total- 100%general Fund	\$	451,251	\$ 3,660,147	\$ 3,660,147	\$ 3,660,147
50% voluntarily committed		2026=90 days	2027	2028	2029
DailyRate	\$	334.26	\$ 334.26	\$ 334.26	\$ 334.26
# people		15	30	30	30
Total-Medicaid Match	\$	451,251	\$ 3,660,147	\$ 3,660,147	\$ 3,660,147
State Share		38.39%	38.53%	38.53%	38.53%
Federal Share		61.61%	61.47%	61.47%	61.47%
State Share	\$	173,235	\$ 1,410,255	\$ 1,410,255	\$ 1,410,255
Federal Share	\$	278,016	\$ 2,249,892.36	\$ 2,249,892.36	\$ 2,249,892
	\$	451,251	\$ 3,660,147	\$ 3,660,147	\$ 3,660,147
Total Cost Category D ALF Bed Days					
State Share	\$	624,486	\$ 5,070,402	\$ 5,070,402	\$ 5,070,402
Federal Share	\$	278,016	\$ 2,249,892	\$ 2,249,892	\$ 2,249,892
Total Cost Category D ALF Bed Days	\$	902,502	\$ 7,320,294	\$ 7,320,294	\$ 7,320,294

6. Individuals placed in category D ALF who are in BSW or SDMI waiver slots would be eligible for case management services at a daily rate of \$11.45 for BSW and \$14.70 for the SDMI waiver. These costs would be funded at the standard Medicaid FMAP.

The table below shows the total cost of case management services.

Case Management/day-BSW		2026=90 days	2027	2028	2029
DailyCMrate	\$	11.45	\$ 11.45	\$ 11.45	\$ 11.45
# people		20	40	40	40
Total BSWCM Costs	\$	20,610	\$ 167,170	\$ 167,170	\$ 167,170
Case Management/day-SDMI		2026=90 days	2027	2028	2029
DailyCMrate	\$	14.70	\$ 14.70	\$ 14.70	\$ 14.70
# people		10	20	20	20
Total SDMI CM Costs	\$	13,230	\$ 107,310	\$ 107,310	\$ 107,310
Total Case Management Costs	\$	33,840	\$ 274,480	\$ 274,480	\$ 274,480
State Share		38.39%	38.53%	38.53%	38.53%
Federal Share		61.61%	61.47%	61.47%	61.47%
State Share	\$	12,991	\$ 105,757	\$ 105,757	\$ 105,757
Federal Share	\$	20,849	\$ 168,723	\$ 168,723	\$ 168,723
Total Case Management Costs	\$	33,840	\$ 274,480	\$ 274,480	\$ 274,480

7. The department assumes the fiscal impact of Section 1 (g) requiring technical assistance to a category D ALF is de-minimis and will be absorbed by the department.
8. The department assumes a contracted staff person would be hired to assist the department with implementing the provisions of the bill. It is assumed this person would begin working on July 1, 2025, and

would be needed for 800 hours at a cost of \$70 per hour for a total cost of \$56,000. The contracted staff person would draft and submit the waiver amendment to CMS, update administrative rules and review and update department policies. This would be funded with 50% general fund and 50% federal Medicaid admin funds.

9. The department assumes no offsetting reduction in costs at the Montana State Hospital (MSH) as any available beds at MSH as a result of individuals diverted from MSH to a category D ALF will be backfilled by other individuals.

### Fiscal Analysis Table

#### Department of Public Health and Human Services

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$56,000	\$0	\$0	\$0
Benefits	\$936,342	\$7,594,774	\$7,594,774	\$7,594,774
<b>TOTAL Expenditures</b>	<b>\$992,342</b>	<b>\$7,594,774</b>	<b>\$7,594,774</b>	<b>\$7,594,774</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$665,477	\$5,176,159	\$5,176,159	\$5,176,159
Federal Special Revenue (03)	\$326,865	\$2,418,615	\$2,418,615	\$2,418,615
<b>TOTAL Funding of Expenditures</b>	<b>\$992,342</b>	<b>\$7,594,774</b>	<b>\$7,594,774</b>	<b>\$7,594,774</b>
<b><u>Revenues</u></b>				
Federal Special Revenue (03)	\$326,865	\$2,418,615	\$2,418,615	\$2,418,615
<b>TOTAL Revenues</b>	<b>\$326,865</b>	<b>\$2,418,615</b>	<b>\$2,418,615</b>	<b>\$2,418,615</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$665,477)	(\$5,176,159)	(\$5,176,159)	(\$5,176,159)
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

#### Technical Concerns

1. The category D ALF reimbursement methodology mentioned in assumption #3 would require waiver amendments to the BSW and SDMI waivers and is subject to CMS approval.
2. Placing individuals in a category D ALF, who would otherwise be committed, would require additional waiver slots which would require permission from CMS in the form of a waiver amendment to the BSW and SDMI waivers.
3. The federal Home and Community Based Services (HCBS) settings rule (42 CFR 441.301) require facilities with certain characteristics to undergo a heightened scrutiny review to ensure the setting is in compliance with the settings rule. Category D ALF facilities may be subject to this review and approval process by CMS. If a facility is subject to the heightened scrutiny review process and not approved by CMS, these facilities will need to be reimbursed using state-only funds.
4. The federal HCBS settings rule (42 CFR 441.301) impacts the ability for Medicaid HCBS funds to be used for placement of individuals in a category D facility where placement arises from an order of involuntary commitment to the facility. For patients who are involuntarily committed, these facilities will need to be reimbursed using state-only funds.
5. Use of Medicaid HCBS funds may be further limited for placement in a facility that uses restraints or


seclusion. Under the federal regulation, HCBS funds may be used only in settings that meet certain qualities including:

- a. The setting is integrated in and facilitates full access of the individual to the greater community
  - b. The setting is selected by the individual among other setting options
  - c. The setting ensures the individual's choice of services and supports
  - d. The setting ensures the individual's freedom from coercion and restraint
6. Although the regulation references freedom from restraint, the CMS § 1915(c) HCBS waiver application does provide an option for states to seek allowance for the use of restraints and restrictive interventions with appropriate safeguards in place. The department's approved waiver applications for BSW and Severe and Disabling Mental Illness waiver vary on whether restraints and restrictive interventions are permitted. Therefore, the department would need to seek waiver amendments and receive approval from CMS in order for HCBS funds to be used in category D facilities where restraint or seclusion is used.
7. Necessary CMS approvals to receive federal funds for category D ALF Services as noted in technical notes 1, 2, 3, 5, and 6 may take a considerable amount of time for approval, and may delay the start date of receiving federal funds for these service in April 2026 as assumed in assumption #1-4.
8. For purposes of this fiscal note, the department assumed 60 individuals would be served in a category D ALF by FY27. The actual number of individuals served is unknown and is dependent on provider capacity and the acuity of individuals being diverted or discharged from MSH and if the category D ALF is the most appropriate setting to meet their needs.

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Sponsor's Initials

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Date  

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Budget Director's Initials

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3/4/2025

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Date