



AN ACT GENERALLY REVISING LAWS RELATED TO TELEHEALTH SERVICES; ALLOWING HEALTH CARE PROVIDERS TO PROVIDE SERVICES BY MEANS OF TELEHEALTH; ALLOWING MEDICAID COVERAGE OF SERVICES PROVIDED BY MEANS OF TELEHEALTH; PROVIDING DEFINITIONS; CLARIFYING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-7-101, 37-7-201, 37-11-101, 37-11-105, 37-15-102, 37-15-202, 37-15-314, 37-15-315, 53-6-113, AND 53-6-155, MCA.

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

Section 1. Telehealth services -- rulemaking authority. (1) A person licensed under this title to provide health care in the ordinary course of business or practice of a profession may provide services by means of telehealth when the use of telehealth:

- (a) is appropriate for the services being provided;
- (b) meets the standard of care for delivery of services; and
- (c) complies with any administrative rules for telehealth adopted by the board that licenses the health care provider.

(2) A board may adopt rules establishing requirements for the use of telehealth by its licensees.

(3) (a) For the purposes of this section, "telehealth" means the use of audio, video, or other telecommunications technology or media, including audio-only communication, that is:

- (i) used by a health care provider or health care facility to deliver health care services; and
- (ii) delivered over a secure connection that complies with the requirements of state and federal privacy laws.

(b) The term does not include delivery of health care services by means of facsimile machines or electronic messaging alone. The use of facsimile machines and electronic messaging is not precluded if used in conjunction with other audio, video, or telecommunications technology or media.

(c) For physicians providing written certification of a debilitating medical condition pursuant to 50-46-310, the term does not include the use of audio-only communication unless the physician has previously established a physician-patient relationship through an in-person encounter.

Section 2. Telehealth services -- requirements -- limitations. (1) Providers enrolled in the medicaid program may provide medically necessary services by means of telehealth if the service:

(a) is clinically appropriate for delivery by telehealth as specified by the department by rule or policy;

(b) comports with the guidelines of the applicable medicaid provider manual; and

(c) is not specifically required in the applicable provider manual to be provided in a face-to-face manner.

(2) A provider shall:

(a) ensure an enrollee receiving telehealth services has the same rights to confidentiality and security as provided for traditional office visits;

(b) follow consent and patient information protocols consistent with the protocols followed for in-person visits; and

(c) comply with recordkeeping requirements established by the department by rule.

(3) Telehealth services:

(a) may be provided using secure portal messaging, secure instant messaging, telephone communication, or audiovisual communication;

(b) may not be provided in a setting or manner not otherwise authorized by law; and

(c) must be reimbursed at the same rate of payment as services delivered in person.

(4) An enrollee's residence is not reimbursable as an enrolled originating site provider.

(5) The department shall adopt rules for the provision of telehealth services, including but not limited to:

(a) billing procedures for enrolled providers;

(b) the services considered clinically appropriate for telehealth purposes;

(c) recordkeeping requirements for providers, including originating site providers; and

(d) other requirements for originating site providers, including allowable provider types,

reimbursement rates, and requirements for the secure technology to be used at originating sites.

(6) Nothing in this section may be construed as altering the scope of practice of any enrolled provider delivering services by means of telehealth.

Section 3. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or

device based on:

- (a) a practitioner's prescription drug order;
- (b) a professional practice relationship between a practitioner, pharmacist, and patient;
- (c) research, instruction, or chemical analysis, but not for sale or dispensing; or
- (d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(15) "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a drug or device and does not include administering or dispensing a prescription drug, pursuant to section 353(b)(1), or a new animal drug, pursuant to section 360b(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(16) "Drug" means a substance:

- (a) recognized as a drug in any official compendium or supplement;
- (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (c) other than food, intended to affect the structure or function of the body of humans or animals; and
- (d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes

but is not limited to the following evaluations:

- (a) known allergies;
- (b) rational therapy contraindications;
- (c) reasonable dose and route administration;
- (d) reasonable directions for use;
- (e) drug-drug interactions;
- (f) drug-food interactions;
- (g) drug-disease interactions; and
- (h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "FDA" means the United States food and drug administration.

(20) "Health care facility" has the meaning provided in 50-5-101.

(21) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(22) "Health information system" means one of the following systems used to compile and manage patient health care information:

- (a) an electronic health record system;
- (b) a health information exchange approved by the board;
- (c) a pharmacy dispensing system; or
- (d) a system defined by the board by rule.

(23) "Hospital" has the meaning provided in 50-5-101.

(24) "Immunization-certified pharmacist" means a pharmacist who:

(a) has successfully completed an immunization delivery course of training that is approved by the accreditation council for pharmacy education or by an authority approved by the board and that, at a minimum, includes instruction in hands-on injection technique, clinical evaluation of indications and contraindications of immunizations, storage and handling of immunizations, and documentation and reporting; and

(b) holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, the American red cross, or another recognized provider.

(25) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(26) "Long-term care facility" has the meaning provided in 50-5-101.

(27) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(28) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(29) "Outsourcing facility" means a facility at one geographic location or address that:

(a) engages in compounding of sterile drugs;

(b) has elected to register as an outsourcing facility with FDA; and

(c) complies with all the requirements of section 353b of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(30) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to

voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(31) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(32) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(33) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(34) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(35) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(36) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(37) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(38) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement, except as provided in 37-7-105, and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
- (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other

health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(39) "Practice ~~telepharmacy~~ pharmacy by means of telehealth" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(40) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(41) "Prescriber" has the same meaning as provided in 37-7-502.

(42) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(43) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(44) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(45) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(46) "Registry" means the prescription drug registry provided for in 37-7-1502.

(47) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

- (a) do not require the exercise of the pharmacist's independent professional judgment; and
- (b) are verified by the pharmacist.

(48) "Wholesale" means a sale for the purpose of resale."

Section 4. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization -- powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, including outsourcing facilities, as well as for the environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

- (ii) the training, qualifications, employment, and registration of pharmacy technicians; and
- (iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;
- (d) examining applicants and issuing and renewing licenses of:
 - (i) applicants whom the board considers qualified under this chapter to practice pharmacy;
 - (ii) pharmacies and certain stores under this chapter;
 - (iii) wholesale distributors;
 - (iv) third-party logistics providers as defined in 37-7-602; and
 - (v) persons engaged in the manufacture and distribution of drugs or devices;
- (e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;
- (f) issuing certificates of "certified pharmacy" under this chapter;
- (g) establishing and collecting license and registration fees;
- (h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.
 - (i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.
 - (j) making rules for the conduct of its business;
 - (k) performing other duties and exercising other powers as this chapter requires; and
 - (l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

- (i) requirements and qualifications for the transfer of board-issued licenses;
 - (ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;
 - (iii) qualifications and procedures for registering pharmacy technicians; and
 - (iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice ~~telepharmacy~~ pharmacy by means of telehealth across state lines.
- (3) The board may:
- (a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and
 - (b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."

Section 5. Section 37-11-101, MCA, is amended to read:

"37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of physical therapy examiners provided for in 2-15-1748.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.
- (4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.
- (5) "Physical therapist assistant" or "assistant" means a person who:
 - (a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;
 - (b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and
 - (c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings, in person or through telemedicine, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "~~Telemedicine-Telehealth~~" has the meaning provided in ~~33-22-438~~ [section 1].

(12) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law."

Section 6. Section 37-11-105, MCA, is amended to read:

"37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student. (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This supervision requires the licensed physical therapist to make an onsite visit or a visit by means of telemedicine

telehealth to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist."

Section 7. Section 37-15-102, MCA, is amended to read:

"37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(2) "Audiology aide or assistant" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(3) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) "Facilitator" means a trained individual who is physically present with the patient and facilitates ~~telepractice~~ telehealth at the direction of an audiologist or speech-language pathologist. A facilitator may be but

is not limited to an audiology or speech-language pathology aide or assistant.

(6) "Patient" means a consumer of services from an audiologist or speech-language pathologist, including a consumer of those services provided through ~~telepractice~~ telehealth.

(7) "Practice of audiology" means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the selling, dispensing, and fitting of hearing aids.

(8) "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatriest", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

~~(11) "Telepractice" means the practice of audiology or speech-language pathology by an audiologist or speech-language pathologist at a distance through any means, method, device, or instrumentality for the purposes of assessment, intervention, and consultation.~~

(11) "Telehealth" has the meaning provided in [section 1]."

Section 8. Section 37-15-202, MCA, is amended to read:

"37-15-202. Powers and duties of board and department. (1) The board shall:

- (a) administer, coordinate, and enforce the provisions of this chapter;
- (b) evaluate the qualifications of each applicant for a license as issued under this chapter and

supervise the examination of applicants;

(c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(d) adopt rules, including but not limited to those governing ethical standards of practice or standards for ~~telepractice~~ telehealth under this chapter;

(e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses for the prosecution;

(g) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules that are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law."

Section 9. Section 37-15-314, MCA, is amended to read:

"37-15-314. ~~Telepractice -- authorization -- licensure~~ Telehealth -- audiology aides and assistants. (1) An audiologist or speech-language pathologist who is licensed under and meets the requirements of this chapter may engage in ~~telepractice~~ telehealth in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist or speech-language pathologist who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through ~~telepractice~~ telehealth without first obtaining a license from the board in accordance with this part.

(3) An audiology aide or assistant or a speech-language pathology aide or assistant may not engage in ~~telepractice telehealth as defined in [section 1]. This section does not prohibit an audiology aide or assistant or a speech-language pathology aide or assistant from serving~~ but may serve as a facilitator for telehealth services."

Section 10. Section 37-15-315, MCA, is amended to read:

"37-15-315. Scope of telepractice telehealth -- requirements. (1) The quality of services provided through ~~telepractice telehealth~~ must be equivalent to the quality of audiology or speech-language pathology services that are provided in person and must conform to all existing state, federal, and institutional professional standards, policies, and requirements for audiologists and speech-language pathologists.

(2) Technology used to provide ~~telepractice telehealth~~, including but not limited to equipment, connectivity, software, hardware, and network compatibility, must be appropriate for the service being delivered and must address the unique needs of each patient. Audio and video quality utilized in ~~telepractice telehealth~~ must be sufficient to deliver services that are equivalent to services that are provided in person. A person providing ~~telepractice telehealth~~ services is responsible for calibrating clinical instruments in accordance with standard operating procedures and the manufacturer's specifications.

(3) A person providing ~~telepractice telehealth~~ services shall comply with all state and federal laws, rules, and regulations governing the maintenance of patient records, including maintaining patient confidentiality and protecting sensitive patient data.

(4) A person providing ~~telepractice telehealth~~ services shall conduct an initial assessment of each patient's candidacy for ~~telepractice telehealth~~, including the patient's behavioral, physical, and cognitive abilities to participate in services provided through ~~telepractice telehealth~~. ~~Telepractice Telehealth~~ may not be provided only through written correspondence.

(5) At a minimum, a person providing ~~telepractice telehealth~~ services shall provide a notice of ~~telepractice telehealth~~ services to each patient and, if applicable, the patient's guardian, caregiver, or multidisciplinary team. The notification must provide that a patient has the right to refuse ~~telepractice telehealth~~ services and has options for service delivery and must include instructions on filing and resolving complaints."

Section 11. Section 53-6-113, MCA, is amended to read:

"53-6-113. Department to adopt rules. (1) The department shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and that may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules that are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

- (a) the availability of appropriated funds;
- (b) the actual cost of services;
- (c) the quality of services;
- (d) the professional knowledge and skills necessary for the delivery of services; and
- (e) the availability of services.

(4) The department shall specify by rule those professionals who may:

- (a) deliver or direct the delivery of particular services; and
- (b) deliver services by means of telehealth in accordance with [section 2].

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) (a) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program, including the medicaid program provided for in 53-6-195. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, confidentiality of applicant

and recipient information, and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.

(b) The department may not apply financial criteria below \$15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups, as provided in 42 U.S.C. 1396a(l)(1)(B) through (l)(1)(D).

(c) The department may not apply financial criteria below \$15,000 for an individual and \$30,000 for a couple for resources other than income in determining the eligibility of individuals for the medicaid program for workers with disabilities provided for in 53-6-195.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed care systems. Rules to be adopted may include but are not limited to rules concerning:

- (a) participation in managed care;
- (b) selection and qualifications for providers of managed care; and
- (c) standards for the provision of managed care.

(9) Subject to subsection (6), the department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving section 1931 medicaid benefits, as defined in 53-4-602, who lose eligibility because of increased income to the assistance unit, as that term is defined in the rules of the department, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature.

(10) Unless required by federal law or regulation, the department may not adopt rules that exclude a child from medicaid services or require prior authorization for a child to access medicaid services if the child would be eligible for or able to access the services without prior authorization if the child was not in foster care."

Section 12. Section 53-6-155, MCA, is amended to read:

"53-6-155. Definitions. As used in this part, unless expressly provided otherwise, the following

definitions apply:

(1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) "Applicant" means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person's own behalf or on behalf of another person; or

(b) on whose behalf an application has been submitted.

(3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form, that is used to claim specific services or items as payable or reimbursable under the medicaid program or that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program. The term includes any documents submitted as part of or in support of the claim.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Document" means any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.

(7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not limited to any conduct or omission under the medicaid program that would constitute a criminal offense under Title 45, chapter 6 or 7.

(8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter 6.

(9) "Medicaid agency" means any agency or entity of state, county, or local government that administers any part of the medicaid program, whether under direct statutory authority or under contract with an

authorized agency of the state or federal government. The term includes but is not limited to the department, the department of corrections, local offices of public assistance, and other local and state agencies and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims processing or payment, utilization review, case management, provider certification, investigation, or other administration of the medicaid program.

(10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. Misappropriation of patient property includes but is not limited to any conduct with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) (a) "Originating site provider" means an enrolled provider who is operating a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., and assisting an enrollee with the technology necessary for a telehealth visit.

(b) An originating site provider is not required to participate in the delivery of the health care service.

~~(14)~~(15) "Recipient" means a person:

(a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or

not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

~~(15)~~(16) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

(17) (a) "Telehealth" means the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distance, including but not limited to the use of secure portal messaging, secure instant messaging, audiovisual communications, and audio-only communications.

(b) The term includes both clinical and nonclinical services."

Section 13. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 2].

Section 14. Coordination instruction. If both House Bill No. 210 and [this act] are passed and approved and both bills contain a section that amends 37-15-314, then the sections amending 37-15-314 are void and 37-15-314 must be amended as follows:

"37-15-314. Telepractice -- authorization -- licensure Telehealth -- authorization -- assistants. (1) An audiologist, ~~or~~ speech-language pathologist, speech-language pathology assistant, or audiology assistant who is licensed under and meets the requirements of this chapter may engage in ~~telepractice~~ telehealth in Montana without obtaining a separate or additional license from the board.

(2) Except as provided in 37-15-103, an audiologist, ~~or speech-language pathologist, speech-language pathology assistant, or audiology assistant~~ who is not a resident of Montana and who is not licensed under this chapter may not provide services to patients in Montana through ~~telepractice~~ telehealth without first obtaining a license from the board in accordance with this part.

(3) An audiology ~~aid~~ ~~or assistant~~ or a speech-language pathology ~~aid~~ ~~or assistant~~ may ~~not~~ engage in ~~telepractice~~ telehealth. ~~This section does not prohibit an audiology aid or assistant or a speech-language pathology aid or assistant from serving as a facilitator or provide other services as directed by a speech-language pathologist or audiologist that otherwise comply with board rules for scope of practice by speech-language pathology assistants and audiology assistants."~~

- END -

I hereby certify that the within bill,
SB 357, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 357

INTRODUCED BY J. GROSS

AN ACT GENERALLY REVISING LAWS RELATED TO TELEHEALTH SERVICES; ALLOWING HEALTH CARE PROVIDERS TO PROVIDE SERVICES BY MEANS OF TELEHEALTH; ALLOWING MEDICAID COVERAGE OF SERVICES PROVIDED BY MEANS OF TELEHEALTH; PROVIDING DEFINITIONS; CLARIFYING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-7-101, 37-7-201, 37-11-101, 37-11-105, 37-15-102, 37-15-202, 37-15-314, 37-15-315, 53-6-113, AND 53-6-155, MCA.