

1 SENATE BILL NO. 564

2 INTRODUCED BY T. MCGILLVRAY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA HEALTH CORPS ACT; EXPANDING
5 ELIGIBILITY FOR SERVICES PROVIDED BY HEALTH CORPS PHYSICIANS; ~~REVISING LEGAL LIABILITY~~
6 ~~PROVISIONS FOR SERVICES PROVIDED BY HEALTH CORP PHYSICIANS;~~ ALLOWING THE BOARD OF
7 MEDICAL EXAMINERS TO MAKE MEDICAL MALPRACTICE INSURANCE AVAILABLE TO HEALTH CORPS
8 MEMBERS; REQUIRING A FEE ON PHYSICIANS FOR BOARD-PURCHASED MEDICAL MALPRACTICE
9 INSURANCE; REVISING THE APPLICATION FEE FOR INITIAL ENROLLMENT IN THE HEALTH CORPS
10 PROGRAM; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS
11 27-1-736, 37-3-203, 37-3-802, 37-3-803, 37-3-804, AND 37-3-805, AND ~~37-3-806,~~ MCA; AND PROVIDING AN
12 EFFECTIVE DATE, AND AN APPLICABILITY DATE, ~~AND A TERMINATION DATE.~~"

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 27-1-736, MCA, is amended to read:

17 **"27-1-736. Limits on liability of medical practitioner or dental hygienist who provides services**
18 **without compensation.** (1) A medical practitioner, as defined in 37-2-101, or a dental hygienist licensed under
19 Title 37, chapter 4, who renders, at any site, any health care within the scope of the provider's license,
20 voluntarily and without compensation, to a patient of a clinic, to a patient referred by a clinic, or in a community-
21 based program to provide access to health care services for uninsured persons is not liable to a person for civil
22 damages resulting from the rendering of the care unless the damages were the result of gross negligence or
23 willful or wanton acts or omissions by the medical practitioner or dental hygienist. Each patient must be given
24 notice that under state law the medical practitioner or dental hygienist cannot be held legally liable for ordinary
25 negligence if the medical practitioner or dental hygienist does not have malpractice insurance.

26 (2) A physician participating in the Montana health corps act provided for in Title 37, chapter 3,
27 part 8, is immune from liability as provided in 37-3-806.

28 ~~(2)~~(3) For purposes of this section:

1 (a) "clinic" means a place for the provision of health care to patients that is organized for the
2 delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;

3 (b) "community-based program to provide access to health care services for uninsured persons"
4 means a local program in which care is provided without compensation to individuals who have been referred
5 through that community-based program and in which the medical practitioner or dental hygienist has entered
6 into a written agreement to provide the service;

7 (c) "health care" has the meaning provided in 50-16-504;

8 (d) "without compensation" means that the medical practitioner or dental hygienist voluntarily
9 rendered health care without receiving any reimbursement or compensation, except for reimbursement for
10 supplies.

11 ~~(3)~~(4) Subsection (1) applies only to a medical practitioner or dental hygienist who:

12 (a) does not have malpractice insurance coverage because the medical practitioner or dental
13 hygienist is retired or is otherwise not engaged in active practice; or

14 (b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for
15 services provided under this section."

16

17 **Section 2.** Section 37-3-203, MCA, is amended to read:

18 **"37-3-203. Powers and duties -- rulemaking authority.** (1) The board may:

19 (a) adopt rules necessary or proper to carry out the requirements in ~~Title 37, chapter 3, parts 1~~
20 ~~through 4, this chapter~~ and of chapters covering podiatry, acupuncture, physician assistants, nutritionists, and
21 emergency care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively. Rules
22 adopted for emergency care providers with an endorsement to provide community-integrated health care must
23 address the scope of practice, competency requirements, and educational requirements.

24 (b) hold hearings and take evidence in matters relating to the exercise and performance of the
25 powers and duties vested in the board;

26 (c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this
27 chapter as well as Title 37, chapters 6, 13, 20, and 25, and Title 50, chapter 6, regarding emergency care
28 providers licensed by the board. The board also may assist the county attorneys of this state in the prosecution

1 of persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection
2 (1)(c).

3 (d) review certifications of disability and determinations of eligibility for a permit to hunt from a
4 vehicle as provided in 87-2-803(11); and

5 (e) fund additional staff, hired by the department, to administer the provisions of this chapter, by
6 increasing license fees as necessary.

7 (2) (a) The board shall establish a medical assistance program to assist and rehabilitate
8 licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally
9 impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or
10 substance or by mental illness or chronic physical illness.

11 (b) The board shall ensure that a licensee who is required or volunteers to participate in the
12 medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed
13 to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a
14 qualified treatment program outside the state unless the board finds that there is no qualified treatment program
15 in this state.

16 (3) (a) The board shall report annually on the number and types of complaints it has received
17 involving physician practices in providing written certification, as defined in 16-12-502, for the use of marijuana
18 for a debilitating medical condition provided for in Title 16, chapter 12, part 5. The report must contain:

19 (i) the number of complaints received by the board pursuant to 37-1-308;

20 (ii) the number of complaints for which a reasonable cause determination was made pursuant to
21 37-1-307;

22 (iii) the general nature of the complaints;

23 (iv) the number of investigations conducted into physician practices in providing written
24 certification; and

25 (v) the number of physicians disciplined by the board for their practices in providing written
26 certification for the use of marijuana for a debilitating medical condition.

27 (b) Except as provided in subsection (3)(c), the report may not contain individual identifying
28 information regarding the physicians about whom the board received complaints.

1 (c) For each physician against whom the board takes disciplinary action related to the physician's
2 practices in providing written certification for the use of marijuana for a debilitating medical condition, the report
3 must include:

- 4 (i) the name of the physician;
- 5 (ii) the general results of the investigation of the physician's practices; and
- 6 (iii) the disciplinary action taken against the physician.

7 (d) The board shall provide the report to the economic affairs interim committee in accordance with
8 5-11-210 and shall make a copy of the report available on the board's website.

9 (4) The board may enter into agreements with other states for the purposes of mutual recognition
10 of licensing standards and licensing of physicians and emergency care providers from other states under the
11 terms of a mutual recognition agreement."
12

13 **Section 3.** Section 37-3-802, MCA, is amended to read:

14 **"37-3-802. Purpose -- establishment of program.** ~~(4)~~The purposes of this part are to:

15 ~~(a)(1)~~ provide ~~primary~~ outpatient care to ~~low-income individuals and to individuals eligible for~~
16 ~~medicare or medicaid~~ ELIGIBLE INDIVIDUALS by ~~retired~~ physicians at affordable prices;

17 ~~(b)(2)~~ keep the elderly or infirm in their homes longer; and

18 ~~(c)(3)~~ provide home health care visits for patients who have difficulty in traveling.

19 ~~(2)~~ ~~The board shall adopt rules to establish the program. The rules must provide procedures for~~
20 ~~enrolling retired physicians in the health corps and procedures under which physicians or health care facilities~~
21 ~~may refer medicare or medicaid patients to members of the health corps."~~
22

23 **Section 4.** Section 37-3-803, MCA, is amended to read:

24 **"37-3-803. Definitions.** As used in this part, unless the context requires otherwise, the following
25 definitions apply:

26 (1) "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS:

27 (A) ENROLLED IN THE MEDICARE PROGRAM;

28 (B) ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM PROVIDED FOR IN TITLE 53, CHAPTER 6; OR

1 ~~(C)~~ UNINSURED AND WHOSE FAMILY INCOME DOES NOT EXCEED 200% OF THE FEDERAL POVERTY LEVEL.

2 ~~(1)(2)~~ "Health care" has the meaning provided in 50-16-504.

3 ~~(2)(3)~~ "Health care facility" has the meaning provided in 50-5-101.

4 ~~(3)~~ "Low income" means a person who is:

5 ~~(a)~~ eligible for the medical assistance program provided for in Title 53, chapter 6; or

6 ~~(b)~~ uninsured and whose family income does not exceed 200% of the federal poverty level."

7

8 **Section 5.** Section 37-3-804, MCA, is amended to read:

9 **"37-3-804. Eligibility for participation.** A ~~retired~~ physician who is properly licensed and in good
10 standing in Montana may participate in the health corps provided for in this part on:

11 ~~(1)~~ payment of a \$30 fee for a new applicant or payment of a renewal fee established by the board
12 by rule; and

13 ~~(2)~~ providing a listing of clinical services offered by the applicant and the location where the
14 services are offered if the services are rendered outside of a person's home. The board shall accept
15 applications for participation in the health corps and provide written guidelines to participants in the health corps
16 concerning the provisions of this part and rules adopted to implement this part."

17

18 **Section 6.** Section 37-3-805, MCA, is amended to read:

19 **"37-3-805. Referral of patients to program -- visits Visits -- charges.** ~~(1)~~ The board shall adopt
20 rules under which physicians or health care facilities may refer medicare or medicaid patients to the health
21 corps program.

22 ~~(1)~~ PHYSICIANS OR HEALTH CARE FACILITIES MAY REFER MEDICARE OR MEDICAID PATIENTS TO THE
23 HEALTH CORPS PROGRAM.

24 ~~(2)(1)(2)~~ _____ A health corps member shall may make home visitations to eligible patients
25 INDIVIDUALS for the purpose of providing health care to eligible patients THE INDIVIDUALS.

26 ~~(3)(2)(3)~~ A health corps member may charge \$10 for a patient contact or visit and may submit a
27 charge to medicare or medicaid."

28

1 **Section 7.** Section 37-3-806, MCA, is amended to read:

2 ~~"37-3-806. — Limitation on liability. (1) A physician who renders health care within the scope of the~~
3 ~~physician's license to a patient under this part and submits a payment to medicare or medicaid for the care is~~
4 ~~not liable to a patient or other person for civil damages resulting from the rendering of the care unless the~~
5 ~~damages were the result of gross negligence or willful or wanton acts or omissions by the physician.~~

6 ~~(2) — (a) A physician who renders health care within the scope of the physician's license and does~~
7 ~~not submit a claim to medicare or medicaid is immune from any cause of action associated with services~~
8 ~~provided in accordance with this part.~~

9 ~~(b) — If a patient who receives health care services from a physician who has not submitted a claim~~
10 ~~to medicare or medicaid for the care believes the physician committed gross negligence or willful or wanton~~
11 ~~acts or omissions when providing care, the person may file a complaint of unprofessional conduct with the~~
12 ~~board as provided in 37-1-308. This subsection (2)(b) does not limit a patient's ability to file a complaint of~~
13 ~~unprofessional conduct related to other aspects of the physician's services.~~

14 ~~(c) — The board shall maintain a record of any disciplinary action taken pursuant to this subsection~~
15 ~~(2).~~

16 ~~(3) — Each patient must be given notice that under state law the physician may not be held legally~~
17 ~~liable for ordinary negligence of the limitations on a physician's legal liability for services provided under the~~
18 ~~health corps program. "~~

19
20 **NEW SECTION. SECTION 7. INSURANCE COVERAGE -- ASSESSMENT ON LICENSEES -- OPTIONAL USE. (1)**

21 SUBJECT TO 37-1-121, THE BOARD MAY PROCURE A MALPRACTICE INSURANCE POLICY TO PROVIDE COVERAGE FOR
22 HEALTH CORPS MEMBERS. THE COVERAGE:

23 (A) MAY NOT COVER ANY SERVICES:

24 (I) PERFORMED BY A PHYSICIAN WHO HAS NOT PAID THE FEE REQUIRED UNDER 37-3-804 TO PARTICIPATE
25 IN THE MONTANA HEALTH CORPS ACT; OR

26 (II) PROVIDED BY A HEALTH CORPS PHYSICIAN TO SOMEONE OTHER THAN AN ELIGIBLE INDIVIDUAL;

27 (B) IS LIMITED TO DAMAGES AVAILABLE PURSUANT TO 37-3-806; AND

28 (C) DOES NOT CREATE, INFER, OR ESTABLISH ANY AGENCY RELATIONSHIP OR LIABILITY BY THE BOARD FOR

1 ANY SERVICES PERFORMED UNDER THE MONTANA HEALTH CORPS ACT.
2 (2) A POLICY PURCHASED BY THE BOARD UNDER THIS SECTION MUST BE PAID FOR BY A FEE ESTABLISHED
3 BY THE BOARD BY RULE THAT IS ASSESSED ON ALL PHYSICIANS LICENSED BY THE BOARD.
4 (3) A HEALTH CORPS MEMBER IS NOT REQUIRED TO USE INSURANCE PROVIDED UNDER THIS SECTION. A
5 PHYSICIAN'S DECISION NOT TO USE THE INSURANCE PROVIDED UNDER THIS SECTION DOES NOT AFFECT THE PHYSICIAN'S
6 LIABILITY UNDER 37-3-806.

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8 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2023.

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10 NEW SECTION. SECTION 9. CODIFICATION INSTRUCTION. [SECTION 7] IS INTENDED TO BE CODIFIED AS AN
11 INTEGRAL PART OF TITLE 37, CHAPTER 3, PART 8, AND THE PROVISIONS OF TITLE 37, CHAPTER 3, PART 8, APPLY TO
12 [SECTION 7].

13
14 NEW SECTION. Section 10. Applicability. [This act] applies to health care services provided on or
15 after July 1, 2023.

16
17 NEW SECTION. Section 10. Termination. [Sections 1 through 7] terminate June 30, 2029.

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