

Current Text	<p>SECTION 1. Patient information -- disclosure -- referrals. (1) It is public policy for the state of Montana that a patient receive from health care providers information that allows the patient to make informed decisions not only relating to their medical conditions but also to the financial or quality aspects of their health care decisions.</p> <p>(2) (a) As related to the financial or quality aspects of the health care decisions, a health care practitioner shall disclose, except as provided in subsection (2)(b), to a patient:</p> <p style="padding-left: 20px;">(i) any investment interest in a health care facility; or</p> <p style="padding-left: 20px;">(ii) an employment contract, employment agreement, or contract-for-hire arrangement with a health care facility.</p> <p style="padding-left: 20px;">(b) The provisions of subsection (2)(a) do not apply to a patient seeking emergency care.</p> <p>(3) (a) A health care practitioner who makes referrals to a health care facility shall:</p> <p style="padding-left: 20px;">(i) provide written notification of under 100 words disclosing the investment or employment interest to the patient when making a referral to a facility in which the health care practitioner has an investment or employment interest;</p> <p style="padding-left: 20px;">(ii) provide a list of alternative licensed health care facilities or health care providers if they are available;</p> <p style="padding-left: 20px;">(iii) inform the patient, either orally or through written means, that the patient has freedom to choose the health care provider or facility to obtain services; and</p> <p style="padding-left: 20px;">(iv) assure the patient that the referring health care practitioner will not treat the patient differently depending on the patient's choice of health care practitioner or facility. not prevent a health care</p> <p style="padding-left: 20px;">(b) This subsection (3) does practitioner from stating a preference when making a referral.</p>
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Options based on Recommendations (see below):

1. Remove Section (1), subsections (1) and (2). Renumber
2. Clarify Section (1), subsection (2) as requiring financial/employment disclosure only in cases of initial referrals.
3. Clarify Section (1), subsection (2) to allow disclosure via written information on forms provided to patient along with HIPAA forms.
4. Remove (3)(a)(iii) and (3)(a)(iv).
5. Other?

Suggested Approach:

Whereas, it is public policy for the state of Montana for a patient receive from health care providers information that allows the patient to make informed decisions not only relating to their medical conditions but also to the financial or quality aspects of their health care decisions; and

Whereas, health care providers who make referrals may have financial, contractual, or employment incentives for a referral and unless a patient is educated to know there are options, the patient may not be able to make fully informed decisions about health care.

SECTION 1. Patient information -- disclosure – referrals -- definitions. (1) (a) Except as provided in subsection (2), a health care provider who makes referrals and who has an investment, employment, or contractual interest related to that referral shall disclose the investment, employment, or contractual interest in writing of 100 words or less to an existing or prospective patient. The disclosure must be in at least 10 point type.

(b) The disclosure may request a patient's signature. The disclosure may be provided as part of the general paperwork received by a patient at the initiation of a visit.

(c) If a patient requests options among referrals, the health care policy of the state as provided in 50-4-104 is for the health care provider to educate a consumer about available options.

(d) This subsection (1) does not prohibit a health care provider from stating a preference when

making a referral.

(2) Subsection (1) does not apply to a patient receiving emergency care or to a patient admitted as an inpatient of a hospital or a critical access hospital.

(3) For the purposes of this section, the following definitions apply:

(a) A "health care provider" is a person licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, 34 through 36.

(b) A "referral" is a written or oral order from a health care provider to a patient or client for health care services, including:

(i) the forwarding of a patient or client to another health care provider with a different license or to a health care facility licensed under Title 50 or operated by a health care provider licensed under Title 37; or

(ii) a request or establishment of a plan of care that includes the provision of prescribed health services or prescribed health care supplies.

Requested changes or comments:

Jim McLean with independent physical therapists:

-- Change practitioner to provider. (retain uniformity in code and bill)

Physicians from Bozeman Deaconess Hospital (form letters)

-- "to require us to formally tell patients that we are employed is senseless. The fact that we are employed has no bearing whatsoever on the manner in which we treat patients. In addition, think of how you would react if every physician, nurse, lab tech, and radiology tech you came in touch with had to first inform you of his or her employment relationship...." Letter questioned reason for disclosure when physicians already required federally to report financial interests in a health care facility.

Physicians from Barrett Hospital & HealthCare Clinic:

(form letters)

--"The proposed legislation will have a negative impact on existing employment relationships between physicians and hospitals throughout the state. It will add unnecessary complexity to disclosure requirements that are already covered under CMS Provider Based Clinic regulations. It duplicates the provisions of Stark and anti-kickback laws already in effect, and would place onerous disclosure requirements upon ourselves and other physicians in Dillon without providing any benefit to our patients.

MHA: Strike subsections (1) and (2). In (3) retain (3)(a), striking the words "to a health care facility" to make sure that all referrals are covered. Restrict to referring health care providers (excluding hospital-admitted patients because what else are they to do?). Apply to all referrals, including private clinics and licensed health care facilities. Remove from definition of "referral" any procedures routinely ordered as part of a physician's examination of a patient.

--MHA also commented that extending disclosure to employed physicians is inconsistent with federal Stark and antikickback laws. (Comment – Stark does not preempt a state from being more encompassing.)

--MHA says requiring a list of alternatives creates potential liability problems. Suggests that perhaps a patient could be given a state-produced list of licensees for a relevant referral – or delete (3)(a)(ii).

--MHA notes that 3(a)(iii) goes without saying.

--MHA says 3(a)(iv) is not workable because a patient could choose someone outside a network that would change the referring provider's relationship. Or a patient might choose a provider (e.g. a PT or a chiropractor that a physician would not recommend.)

MMA (Mary McCue comments): In (3)(a) provide that the language address only "when making a referral..." . (If the reference is "when making a referral, that suggests an interruption of business and the need for a signature in the middle of an exam regarding a patient's acknowledgement of the disclosure. If that is workable, the language could say: "When making a referral, a health care provider shall ...")

General comment: Patients would have to sign a statement that they had received the disclosure information (as a protection for provider). This could take more time out of a patient visit.

Note: This section would be codified under Title 37.

Current Text	<p>SECTION 2. Primary responsibility -- contracts -- referrals -- definitions. (1) A health care practitioner's primary responsibility is the welfare and well-being of the patient in all situations except those in which the primary responsibility is to public health.</p> <p>(2) (a) A health care practitioner may enter lawful contracts, agreements, and arrangements, including the acquisition of ownership interests in health care facilities, products, or equipment.</p> <p>(b) An employment contract, employment agreement, or contract-for-hire arrangement may not:</p> <p>(i) require referrals or an expected volume of referrals between parties;</p> <p>(ii) specify that referrals are a basis for remaining an investor or a party to the contract, agreement, or arrangement;</p> <p>(iii) base remuneration or scheduling decisions on an expected volume of referrals; or</p> <p>(iv) base bonuses on referrals or an expected volume of referrals.</p> <p>(3) For the purposes of [section 1] and this section, the following definitions apply:</p> <p>(a) A "health care practitioner" is a person licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, 34 through 36.</p> <p>(b) A "referral" is a written or oral order from a health care practitioner to a patient or client for health care services, including:</p> <p>(i) the forwarding of a patient to another health care practitioner or to a health care facility licensed under Title 50 or operated by a health care practitioner under Title 37 or to an entity that provides or supplies health services or health care supplies;</p> <p>(ii) a request or establishment of a plan of care that includes the provision of health services or health care supplies; and</p> <p>(iii) the information in [section 1(2)].</p>
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Options:

- Revise as suggested by Jim McLean.
- Delete entire section
- Modify by deleting subsections (1) and (2)(a). Retain (2)(b), revising part of definition of referral to exclude “or to an entity that provides or supplies health services or health care supplies” or modify that reference to: “or to an entity outside of the scope of a patient’s exam for the provision or supply of health services, equipment, or medications and health care supplies.” Delete (3)(b)(iii).

Suggested approach:

SECTION 2. Kickbacks prohibited. An employment contract, employment agreement, or contract-for-hire arrangement with a health care provider may not:

- (1) require referrals or an expected volume of referrals between parties;
- (2) specify that referrals are a basis for remaining an investor or a party to the contract, agreement, or arrangement;
- (3) base remuneration or scheduling decisions on an expected volume of referrals; or
- (4) base bonuses on referrals or an expected volume of referrals.

Requested changes or comments:

Comments at March 17 meeting indicated that some people feel subsection (1) is unnecessary. The revised version would be a state expansion to all health care providers of the Stark Act and anti-kickback statutes.

Jim McLean for independent PTs: Under Section 2, subsection (3)(b) revise definition of “referral” to:
 (i) the forwarding of a patient to ~~another a health care practitioner~~ provider with a different license as defined in Title 37 or to a health care facility licensed under Title 50 or operated by a health care ~~practitioner~~ provider under Title 37 or to an entity that provides or supplies health services or health care supplies;

Rationale provided as: If doctor #1 is out of the office, the patient should be able to be seen by doctor #2 in the same office without going through full disclosure.

Bozeman Deaconess Physicians (form letters):

“We became employed physicians for various reasons. We have no problem if our employment contracts direct us to use the hospital for services, if those services are provided in a quality manner. This would be expected in an employer/employee relationship. It does not imply that we are being ‘directed’ to use services needlessly. So again, there is no logic to this restriction.

MHA: Delete section 2(2)(a). It provides no substantive guidance.

--Subsection (2)(a) repeats that lawful acts are OK. Not needed. Was inserted as a reminder that contracting is legal.

--Says Section 2(2)(b) singles out employed docs and creates a state statute that contradicts a federal law. This would make it harder to recruit physicians and retain those we have. Hospitals are already prohibited from kickback and payment for referrals.

--MHA’s earlier reference to provides or supplies health services or health care supplies as part of the definition of referral applies here. If the whole section isn’t deleted, then MHA would recommend deleting the latter half of (3)(b)(i) definition.

COMMENT FROM LISA/Pat: A state statute would not "contradict" federal law because in this case, federal law does not preempt states from being more restrictive. Given the issue about recruitment, the question is - is this section worth having? The recruitment argument apparently says that a hospital-employed physician could not receive additional salary based on referrals. In other words, a hospital would have to refrain from offering incentives to newcomers through referrals, which in turn are a way to gain the money for incentives.

Note: This section would be codified in Title 37.

Current text	SECTION 3. Primary responsibility. The primary concern of any licensee under Title 50 must be the welfare of the patient except when public health takes precedence over the well-being of an individual.
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Suggested approach:

Delete and let 50-4-104 handle policy approach.

Requested changes or comments:

MHA: Delete

Another suggested change would be to incorporate this section into language in 50-4-104, which relates to health care policy:

50-4-104. State health care policy. (1) It is the policy of the state of Montana to continue to investigate and develop strategies that result in all residents having access to quality health services at costs that are affordable.

(2) It is further the policy of the state of Montana that:

(a) Montana's health care system should ensure that care is delivered in the most effective and efficient manner possible;

(b) health promotion, preventative health services, and public health services should play a central role in the system;

(c) the patient-provider relationship should be a fundamental component of Montana's health care system;

(d) individuals should be encouraged to play a significant role in determining their health and appropriate use of the health care system;

(e) accurate and timely health care information should play a significant role in determining the individual's health and appropriate use of

the health care system;

(f) whenever possible, market-based approaches should be relied on to contain the growth in health care spending while attempting to

achieve expanded access, cost containment, and improved quality; and
 (g) the process of health care reform in Montana should be carried out gradually and sequentially to ensure that any undesirable impacts of the state's reform policies on other aspects of the state's economy, particularly on small businesses, are minimized.
 (3) The legislature recognizes the need to increase the emphasis on the education of consumers of health care services. Consumers should be educated concerning the health care system, payment for services, ultimate costs of health care services, and the benefit to consumers generally of providing only those services to the consumer that are reasonable and necessary.

Note: If left as is, the section would be codified in Title 50.

Current text	<p>SECTION 4. Enforcement -- confidentiality -- definitions. (1) (a) Upon receiving notification of a determination of unprofessional conduct by a Title 37 health care licensing board under 37-1-316(19) or Title 37 program under 37-1-410, the department shall investigate to determine if the unprofessional conduct was by a health care provider employed by a health care facility licensed under Title 50; and</p> <p>(b) If the relationship in subsection (1)(a) applies, the department shall determine whether the health care facility provided financial or scheduling benefits in violation of [section 2(2)(b)].</p> <p>(c) If the department determines that a health care facility contract or employment agreement or a consistent pattern of scheduling decisions violated [section 2(2)(b)] and had a causal relationship to the health care practitioner's violation of 37-1-316(19) or 37-1-410(1)(m), the department may take action as provided under 50-5-114.</p> <p>(2) The department may investigate an economic credentialing complaint unrelated to an unprofessional conduct finding as provided in subsection (1). As provided in [Title 5, chapter 5, part 1], the department may take action upon a finding that a health care facility has violated 50-5-117.</p> <p>(3) Until the department makes a determination as provided under subsection (1)(c), the department shall maintain the confidentiality of investigation records obtained from a health care licensing board and from its own investigation. The portions of an employment contract or agreement that violate state law do not have protection under privacy statutes.</p> <p>(4) For the purposes of this section, "health care provider" means an individual licensed, certified, or otherwise authorized under Title 37, except for an individual licensed under Title 37, chapter 18, to provide health care in the ordinary course of business or practice of a profession.</p>
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Suggested approach:
 Changes to internal references for Section 2. Remove subsection (2), because already allowed.

New Section 3:
SECTION 3. Enforcement -- confidentiality -- definitions. (1) (a) Upon receiving notification of a determination of unprofessional conduct by a Title 37 health care licensing board under 37-1-316(19) or Title 37 program under 37-1-410, the department shall investigate to determine if the unprofessional conduct was by a health care provider employed by a health care facility licensed under Title 50; and
 (b) If the relationship in subsection (1)(a) applies, the department shall determine whether the health care facility violated [section 2].
 (c) If the department determines that a health care facility contract or employment agreement violated [section 2] and had a causal relationship to the health care practitioner's violation of 37-1-316(19) or 37-1-410(1)(m), the department may take action as provided under 50-5-114.
 (2) Until the department makes a determination as provided under subsection (1)(c), the department shall maintain the confidentiality of investigation records obtained from a health care licensing board and from its own investigation. The portions of an employment contract or agreement that violate state law do not have protection under privacy statutes.
 (3) For the purposes of this section, "health care provider" means an individual licensed, certified, or otherwise authorized under Title 37, except for an individual licensed under Title 37, chapter 18, to provide health care in the ordinary course of business or practice of a profession.

Requested changes or comments:

Bozeman Deaconess Physicians (form letters):

“If we fail to do any of the above, again which have nothing to do with our credentials as health care providers, we risk the chance of being reported to the Board of Medical Examiners or for our staff, their licensing bureau for unprofessional conduct. Again for what reason?”

Explanation:

--The unprofessional conduct complaint would be related to conflict of interest (as defined) and not to failure to refer.

--This section provides the Department of Public Health and Human Services with direction for actions against a health care facility exerting influence over an employee who engages in economically motivated referral patterns.

--The concern is that an independent physician (or other provider) who feels that all referrals are kept within a hospital could file a complaint with a licensing board.

MHA: Delete. Concerned about setting up a mechanism requiring licensing boards and then DPHHS to monitor financial or scheduling benefits. Says the approach outlaws common practices, including scheduling of operating rooms, coverage of ERs, access to MRI testing. Concerned that scheduling benefits would become micromanaged by boards. Worry that hospital-employed physicians accused of unprofessional conduct for referral patterns would claim “the devil made me do it” – blaming the hospital even if the hospital followed routine practice.

Note: This section would be codified in Title 50.

Current text	<p>SECTION 5. Section 37-1-135 "37-1-135. Licensing investigation and review -- record access -- record sharing. (1) Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.</p> <p>(2) <u>Notwithstanding other confidentiality requirements, a board that determines that a licensee under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36, has engaged in unprofessional conduct under 37-1-316(19) shall report its findings and provide any related investigation reports and records to the department of public health and human services for investigation as provided under [section 4]."</u></p>
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Suggested approach:

Leave as is. Renumber to Section 4.

Requested changes or comments:

MHA: Delete, along with Section 4 (they go together)

Comment: This allows sharing of information between departments on otherwise confidential material.

Current text	<p>SECTION 6. Section 37-1-302 "37-1-302. Definitions. (1) As used in this part, the following definitions apply:</p> <p>(1)(a) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.</p>
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~~(2)~~(b) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

~~(3)~~(c) "Department" means the department of labor and industry.

~~(4)~~(d) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

~~(5)~~(e) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

~~(a)~~(i) whether a person has violated a provision of law justifying discipline against the person;

~~(b)~~(ii) the status of compliance with a stipulation or order of the board;

~~(c)~~(iii) whether a license should be granted, denied, or conditionally issued; or

~~(d)~~(iv) whether a board should seek an injunction.

~~(6)~~(7) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

~~(7)~~(f) "Profession" or "occupation" means a profession or occupation regulated by a board.

(2) For the purposes of this part and 37-1-410, the term "conflict of interest" means a set of conditions in which a health care provider:

(a) exercises professional judgment concerning a patient's welfare that is unduly influenced directly or indirectly by a financial or investment interest;

(b) demonstrates an economically motivated referral pattern, as defined in 50-5-117;

(c) accepts, pays, or promises to pay a part of a fee in exchange for patient referrals;

(d) obtains any fee by fraud, deceit, or misrepresentation; or

(e) pays or receives, indirectly or directly, any fee, wage, commission, rebate, or other compensation for services not actually or personally rendered."

Options:

- Revise as recommended by Mr. McLean.
- Delete.
- Modify to remove "unduly influenced" from (2)(a) and provide an exclusion for PPO participants. E.g. *(a)(i) exercises professional judgment concerning a patient's welfare that takes the health care provider's own financial or investment interest into a greater degree of consideration than the patient's welfare. (ii) Subsection (2)(a)(i) does not apply to a health care provider's consideration of the financial interest related to participation in a preferred provider network.*
- Revised (2)(e) as suggested by Dr. Kubicka: (e) pays or receives, indirectly or directly, any fee, wage, commission, rebate, or other compensation for services not actually or personally rendered. THIS SUBSECTION (2)(E) DOES NOT APPLY TO SHARED COMPENSATION WITHIN A GROUP PRACTICE FOR A DELEGATION OF DUTY TO AN ON-SITE HEALTHCARE PROVIDER."

Remove (2)(c) and (2)(d) and substitute: (c) violates provisions of the antikickback statute, 42 U.S.C. 1320a-7b.

Suggested approach New Section 5:

SECTION 5. Section 37-1-302 "**37-1-302.**

Definitions. (1) As used in this part, the following definitions apply:

~~(1)~~(a) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

~~(2)(b)~~ "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

~~(3)(c)~~ "Department" means the department of labor and industry.

~~(4)(d)~~ "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

~~(5)(e)~~ "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

~~(a)(i)~~ whether a person has violated a provision of law justifying discipline against the person;

~~(b)(ii)~~ the status of compliance with a stipulation or order of the board;

~~(c)(iii)~~ whether a license should be granted, denied, or conditionally issued; or

~~(d)(iv)~~ whether a board should seek an injunction.

~~(6)(7)~~ "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

~~(7)(f)~~ "Profession" or "occupation" means a profession or occupation regulated by a board.

(2) For the purposes of this part and 37-1-410, the term "conflict of interest" means a set of conditions in which a referring health care provider:

(a) exercises professional judgment concerning a patient's welfare that takes the health care provider's own financial, investment, or employment interest into a greater degree of consideration than the patient's welfare; and

(b) demonstrates an economically motivated referral pattern, as defined in 50-5-117."

Requested changes or comments:

Jim McLean for independent PTs: suggests inserting word "referring" before health care provider in first phrase of subsection (2).

(2) For the purposes of this part and 37-1-410, the term "conflict of interest" means a set of conditions in which a REFERRING health care provider:

Dr. Kurt Kubicka/MMA:

--suggests use of word "existing" in front of patient in (2)(a). If use the "referring" terminology from Mr. McLean, then may not need description of "existing patient" in subsection (2)(a)

(a) exercises professional judgment concerning a AN EXISTING patient's welfare that is unduly influenced directly or indirectly by a financial or investment interest;

--in subsection (2)(e) add language: "This subsection (2)(e) does not apply to shared compensation within a group practice for a delegation of duty to an on-site healthcare provider."

...(e) pays or receives, indirectly or directly, any fee, wage, commission, rebate, or other compensation for services not actually or personally rendered. THIS SUBSECTION (2)(E) DOES NOT APPLY TO SHARED COMPENSATION WITHIN A GROUP PRACTICE FOR A DELEGATION OF DUTY TO AN ON-SITE HEALTHCARE PROVIDER."

MHA: Delete this section.

--Notes that "conflict of interest" could be included in practitioner disciplinary, antikickback and state Stark laws. (which is what this does, doesn't it?)

--Notes that words "unduly influenced" are inappropriate because they are used in situations where someone was unable to understand the consequences of actions and unduly influenced by another.

--Points out that an "economically motivated referral pattern" could include referrals to network providers, which may be in a patient's financial interest.

--Notes that (2)(c) and (2)(d) are violations of federal law (for physicians not necessarily all health care

providers but some)
 --Points out that (2)(e) would prevent referrals down the hall in a clinic practice. (same observation as Dr. Kubicka)

Other:
 --suggests exclusion in subsection (2)(a) for “a financial interest related to participation in a preferred provider network”.

<p>Current text</p>	<p>SECTION 7. Section 37-1-316 "37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:</p> <ol style="list-style-type: none"> (1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending; (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification; (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure; (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement; (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation; (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation; (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied. (8) failure to comply with a term, condition, or limitation of a license by final order of a board; (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law; (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance; (11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally; (12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety; (13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice; (14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds; (15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal
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	<p>action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;</p> <p>(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;</p> <p>(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:</p> <p>(a) peer review committee;</p> <p>(b) professional association; or</p> <p>(c) local, state, federal, territorial, provincial, or Indian tribal government;</p> <p>(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.</p> <p><u>(19) for health care practitioners licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36 a finding of conflict of interest detrimental to a patient's welfare and safety."</u></p>
	<p>Suggested Approach: Revise subsection (19): <u>(19) for health care practitioners licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36 a determination of conflict of interest."</u></p> <p>Requested changes or comments:</p> <p>MHA: Working on alternate language about finding conduct that is “detrimental to a patient’s well-being”.</p> <p>Note: This section applies to licensees governed by a licensing board.</p>
<p>Current text</p>	<p>SECTION 8. Section 37-1-410 "37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:</p> <p>(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;</p> <p>(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;</p> <p>(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;</p> <p>(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;</p> <p>(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;</p> <p>(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;</p>

(g) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(h) failing to comply with a term, condition, or limitation of a license by final order of the department;

(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(k) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(m) engaging in a conflict of interest, as defined in 37-1-302, detrimental to a patient's welfare and safety.

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

Suggested Approach:

Revise subsection (1)(m):

(m) engaging in a conflict of interest, as defined in 37-1-302."

Requested changes or comments:

This section applies to licensees not governed by a licensing board.

Jim McLean: recommends under Section 8(1)(m) changing phrase to "or safety" after welfare.

(m) engaging in a conflict of interest, as defined in 37-1-302, detrimental to a patient's welfare and OR safety.

Rationale: It is difficult to define welfare and safety. One or the other is easier to define.

Current text

SECTION 9. Section 50-5-105 **"50-5-105. (Temporary) Discrimination prohibited.** (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.
(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-

	<p>related condition.</p> <p>(b) For the purposes of this subsection (2), the following definitions apply:</p> <p>(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.</p> <p>(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.</p> <p>(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.</p> <p>(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6 (Terminates June 30, 2009 – sec. 6, Ch. 351, L. 2007.)</p> <p>50-5-105. (Effective July 1, 2009) Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.</p> <p>(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.</p> <p>(b) For the purposes of this subsection (2), the following definitions apply:</p> <p>(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.</p> <p>(ii) "HIV related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.</p> <p>(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.</p> <p>(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.</p> <p>(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."</p>
<p>No Changes – reflects removal of temporary language.</p>	
<p>Current text</p>	<p>SECTION 10. Section 50-5-117 "50-5-117. (Temporary) Economic credentialing of physicians prohibited -- definitions. (1) A hospital may not engage in economic credentialing by:</p> <p>(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;</p> <p>(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:</p> <p>(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or</p> <p>(ii) participates or does not participate in any particular health plan; or</p> <p>(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.</p> <p>(2) Notwithstanding the prohibitions in subsection (1), a hospital may:</p> <p><u>(a) refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if a conflict of interest exists or</u> the physician or a partner or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; <u>or</u></p>

(b) exclude a physician member of the board, the president of the hospital medical staff, or presiding officer of a medical staff committee from hospital-related decisions and information if the physician member of the board, president of the hospital staff, or presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Economically motivated referral pattern" means a referral pattern that demonstrates consistent referrals based on a patient's health insurance coverage or ability to pay;

(b) (i) "Conflict of interest" means a situation in which a physician or an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial interest in any licensed health care facility that may compete directly with a hospital licensed under this title, chapter 5.

(ii) For the purposes of subsection (3)(b)(i), a financial interest exists if a person directly or indirectly holds through business or investment an ownership interest in any licensed health care facility that competes with a hospital licensed under this title, chapter 5.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital of:

(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;

(B) equitable medical staff on-call requirements;

(C) disciplinary actions upon a finding by the board of medical examiners, provided for 2-15-1731, that a physician or a physician group has engaged in economically motivated referral patterns;

(D) adherence to a formulary approved by the medical staff; or

(E) other medical staff policy adopted to manage health care costs or improve quality OR other policies that apply to medical staff and were adopted with concurrence of medical staff to manage health care costs or improve quality.

(d) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.

(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

(f) "Physician" has the meaning provided in 37-3-102.

(4) For the purposes of this section, the provisions of 50-5-207 do not apply. ~~(Terminates June 30, 2009 – sec. 6, Ch. 351, L. 2007.)~~

- Options:**
- 1) Expand to include Ambulatory Surgical Centers
 - 2) Remove subsection (2)
 - 3) Revise language in subsection (3), regarding competition, equitable call requirements
 - 4) Delete subsection (4)

Suggested approach:

SECTION 9. Section 50-5-117 "50-5-117. (Temporary) Economic credentialing of physicians prohibited -- definitions. (1) A hospital and an ambulatory surgical center may not engage in economic

credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations or by the American association for accreditation of ambulatory surgery facilities, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital board may exercise its fiduciary responsibility by:

(a) refuse ~~refusing~~ to appoint a physician to the governing body of the hospital ~~or to the position of president of the medical staff or presiding officer of a medical staff committee~~ if a conflict of interest exists or the physician or a partner or employee of the physician provides medical or health care services at, ~~has an ownership interest in,~~ or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(b) excluding a physician member of the board, the president of the hospital medical staff, or presiding officer of a medical staff committee from hospital-related decisions and information if the physician member of the board, president of the hospital staff, or presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Economically motivated referral pattern" means a referral pattern that demonstrates consistent referrals based on a patient's health insurance coverage or ability to pay;

(b) "Conflict of interest" means a situation in which a physician or an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial or investment interest greater than 10% in a licensed health care facility that provides a service traditionally offered by a hospital licensed under this title, chapter 5.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital of:

(i)(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;

(ii)(B) medical staff on-call requirements;

(C) disciplinary actions upon a determination by the board of medical examiners, provided for 2-15-1731, that a physician or a physician group has engaged in economically motivated referral patterns;

(iii)(D) adherence to a formulary approved by the medical staff; or

(iv)(E) other medical staff policy adopted to manage health care costs or improve quality.

(b)(d) "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

(c)(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

(d)(f) "Physician" has the meaning provided in 37-3-102.

~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009 – sec. 6, Ch. 351, L. 2007.)"~~

Requested changes or comments:

Tim Nagel of Advanced-MRI in Billings:

--wants diagnostic facilities left in statute. Roy Kemp's concern is that diagnostic facilities are not defined or licensed, unless they choose to be licensed, so the department has no jurisdiction over them. Mr. Nagel suggested using language referencing facilities that receive Medicaid or Medicare payments. Any ideas?

Mona Jamison:

Subsection 3(b) – There remain some concerns about including immediate family members.

--Concerned that subsection (3)(b)(ii) language is overly broad and allows a hospital to expand into areas previously traditional to independent practitioners:

(ii) For the purposes of subsection (3)(b)(i), a financial interest exists if a person directly or indirectly holds through business or investment an ownership interest in any licensed health care facility that competes with a hospital licensed under this title, chapter 5. She suggests changing the language to include something to the effect of a "traditional service offered by"

The wording would be ... facility that competes with PROVIDES A SERVICE TRADITIONALLY OFFERED BY a hospital licensed under this title, chapter 5.

Roy Kemp at DPHHS: Requests that subsection (4) be deleted from this statute: ~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply.~~

Rationale: Mr. Kemp feels the provision removes his enforcement ability. It was included in order to prevent closure of a hospital for economic credentialing purposes. But that extreme action is not considered likely.

MHA: Subsection (1) expand to include ASCs. Change references to certification to include ASC certification and reference federal and state laws.

--Delete subsection (2) The language creates a presumption that a physician has any right to participate in medical leadership or the governing board. Contends the hospital has a fundamental right to exercise discretion over choosing medical staff leadership and board members.

--Suggests alternate language needed to expand beyond financial interest.

--Delete reference to "equitable" under call issues (subsection 2(c)(ii)(B))

<p>Current text</p>	<p>SECTION 11. Section 50-5-207 "50-5-207. (Temporary) Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:</p> <ul style="list-style-type: none"> (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103. (b) The staff is insufficient in number or unqualified by lack of training or experience. (c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents. (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department. (e) There is cruelty or indifference affecting the welfare of the patients or residents. (f) There is misappropriation of the property or funds of a patient or resident. (g) There is conversion of the property of a patient or resident without the patient's or resident's consent. (h) Any provision of parts 1 through 3, except 50-5-117, is violated.
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	<p>(2) The department may reduce a license to provisional status if:</p> <p><u>(a) as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or</u></p> <p><u>(b) the department has determined through an investigation under [section 4] that a health care facility contributed to a determination of unprofessional conduct under 37-1-316(19) or 37-1-410(1)(m) affecting a health care provider's license.</u></p> <p>(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.</p> <p>(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court. (Terminates June 30, 2009 sec. 6, Ch. 351, L. 2007.)</p> <p>50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:</p> <p>(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.</p> <p>(b) The staff is insufficient in number or unqualified by lack of training or experience.</p> <p>(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.</p> <p>(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.</p> <p>(e) There is cruelty or indifference affecting the welfare of the patients or residents.</p> <p>(f) There is misappropriation of the property or funds of a patient or resident.</p> <p>(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.</p> <p>(h) Any provision of parts 1 through 3 is violated.</p> <p>(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.</p> <p>(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.</p> <p>(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."</p>
	<p>Requested changes or comments: There's a question of whether the economic credentialing aspect should be included under the provisional licensing component. Any suggestions?</p> <p>MHA: Delete? Concern about enforcement</p>
<p>Current text</p>	<p>SECTION 12. Repealer. Section 6, Chapter 351, Laws of 2007, is repealed.</p>
<p>Current text</p>	<p>SECTION 13. {standard} Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 and 2].</p> <p>(2) [Section 3] is intended to be codified as an integral part of Title 50, chapter 4, part 1, and the provisions of Title 50, chapter 4, part 1, apply to [section 3].</p> <p>(3) [Section 4] is intended to be codified as an integral part of Title 50, chapter 5, part 1,</p>

	and the provisions of Title 50, chapter 5, part 1, apply to [section 4].
Suggested approach: Revise to reflect deleted section 3.	
Current text	SECTION 14. {standard} Effective date. [This act] is effective on passage and approval.

With all the suggested approaches together (sections in black not revised except for section number):

Whereas, it is public policy for the state of Montana for a patient receive from health care providers information that allows the patient to make informed decisions not only relating to their medical conditions but also to the financial or quality aspects of their health care decisions; and

Whereas, health care providers who make referrals may have financial, contractual, or employment incentives for a referral and unless a patient is educated to know there are options, the patient may not be able to make fully informed decisions about health care.

SECTION 1. Patient information -- disclosure – referrals -- definitions. (1) (a) Except as provided in subsection (2), a health care provider who makes referrals and who has an investment, employment, or contractual interest related to that referral shall disclose the investment, employment, or contractual interest in writing of 100 words or less to an existing or prospective patient. The disclosure must be in at least 10 point type.

(b) The disclosure may request a patient’s signature. The disclosure may be provided as part of the general paperwork received by a patient at the initiation of a visit.

(c) If a patient requests options among referrals, the health care policy of the state as provided in 50-4-104 is for the health care provider to educate a consumer about available options.

(d) This subsection (1) does not prohibit a health care provider from stating a preference when making a referral.

(2) Subsection (1) does not apply to a patient receiving emergency care or to a patient admitted as an inpatient of a hospital or a critical access hospital.

(3) For the purposes of this section, the following definitions apply:

(a) A "health care provider" is a person licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, 34 through 36.

(b) A "referral" is a written or oral order from a health care provider to a patient or client for health care services, including:

(i) the forwarding of a patient or client to another health care provider with a different license or to a health care facility licensed under Title 50 or operated by a health care provider licensed under Title 37; or

(ii) a request or establishment of a plan of care that includes the provision of prescribed health services or prescribed health care supplies.

SECTION 2. Kickbacks prohibited. An employment contract, employment agreement, or contract-for-hire arrangement with a health care provider may not:

(1) require referrals or an expected volume of referrals between parties;

(2) specify that referrals are a basis for remaining an investor or a party to the contract, agreement, or arrangement;

(3) base remuneration or scheduling decisions on an expected volume of referrals; or

(4) base bonuses on referrals or an expected volume of referrals.

SECTION 3. Enforcement -- confidentiality -- definitions. (1) (a) Upon receiving notification of a determination of unprofessional conduct by a Title 37 health care licensing board under 37-1-316(19) or Title 37 program under 37-1-410, the department shall investigate to determine if the unprofessional conduct was by a health care provider employed by a health care facility licensed under Title 50; and

(b) If the relationship in subsection (1)(a) applies, the department shall determine whether the health care facility violated [section 2].

(c) If the department determines that a health care facility contract or employment agreement violated [section 2] and had a causal relationship to the health care practitioner's violation of 37-1-316(19) or 37-1-410(1)(m), the department may take action as provided under 50-5-114.

(2) Until the department makes a determination as provided under subsection (1)(c), the department shall maintain the confidentiality of investigation records obtained from a health care licensing board and from its own investigation. The portions of an employment contract or agreement that violate state law do not have protection under privacy statutes.

(3) For the purposes of this section, "health care provider" means an individual licensed, certified, or otherwise authorized under Title 37, except for an individual licensed under Title 37, chapter 18, to provide health care in the ordinary course of business or practice of a profession.

SECTION 4. Section 37-1-135 "37-1-135. Licensing investigation and review -- record access --

record sharing. (1) Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

(2) Notwithstanding other confidentiality requirements, a board that determines that a licensee under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36, has engaged in unprofessional conduct under 37-1-316(19) shall report its findings and provide any related investigation reports and records to the department of public health and human services for investigation as provided under [section 4].

SECTION 5. Section 37-1-302 "37-1-302.

Definitions. (1) As used in this part, the following definitions apply:

(1)(a) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2)(b) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3)(c) "Department" means the department of labor and industry.

(4)(d) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5)(e) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a)(i) whether a person has violated a provision of law justifying discipline against the person;

(b)(ii) the status of compliance with a stipulation or order of the board;

(c)(iii) whether a license should be granted, denied, or conditionally issued; or

(d)(iv) whether a board should seek an injunction.

(6)(7) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7)(f) "Profession" or "occupation" means a profession or occupation regulated by a board.

(2) For the purposes of this part and 37-1-410, the term "conflict of interest" means a set of conditions in which a referring health care provider:

(a) exercises professional judgment concerning a patient's welfare that takes the health care provider's own financial, investment, or employment interest into a greater degree of consideration than the patient's welfare; and

(b) demonstrates an economically motivated referral pattern, as defined in 50-5-117."

SECTION 6. Section 37-1-316 "37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

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- (1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;
- (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
- (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;
- (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
- (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.
- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;
- (11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;
- (12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;
- (14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;
- (15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;
- (17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:
 - (a) peer review committee;
 - (b) professional association; or
 - (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.
- (19) for health care practitioners licensed under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36 a determination of conflict of interest."

SECTION 7. Section 37-1-410 **"37-1-410. Unprofessional conduct.** (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

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(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(g) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(h) failing to comply with a term, condition, or limitation of a license by final order of the department;

(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(k) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(l) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(m) engaging in a conflict of interest, as defined in 37-1-302."

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

SECTION 8. Section 50-5-105

"50-5-105. (Temporary) Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6 (Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)

~~50-5-105. (Effective July 1, 2009) Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.~~

~~(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~(b) For the purposes of this subsection (2), the following definitions apply:~~

~~(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

~~(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

SECTION 9. Section 50-5-117 "50-5-117. (Temporary) Economic credentialing of physicians prohibited -- definitions. (1) A hospital and an ambulatory surgical center may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations or by the American association for accreditation of ambulatory surgery facilities, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital board may exercise its fiduciary responsibility by:

~~(a) refuse refusing to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if a conflict of interest exists or the physician or a partner or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or~~

(b) excluding a physician member of the board, the president of the hospital medical staff, or presiding officer of a medical staff committee from hospital-related decisions and information if the physician member of the board, president of the hospital staff, or presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Economically motivated referral pattern" means a referral pattern that demonstrates consistent referrals based on a patient's health insurance coverage or ability to pay;

(b) "Conflict of interest" means a situation in which a physician or an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial or investment interest greater than 10% in a licensed health care facility that provides a service traditionally offered by a hospital licensed under this title, chapter 5. [ADDS 10% AS A SUGGESTED FINANCIAL INTEREST. MHA'S SUGGESTION OF USING IRS GUIDANCE CAN BE DISCUSSED, BUT THE LANGUAGE IS NOT VERY SPECIFIC.]

~~(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.~~

~~(ii) This term does not mean use by the hospital of:~~

~~(i)(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;~~

~~(ii)(B) medical staff on-call requirements; [REMOVES WORD EQUITABLE]~~

~~(C) disciplinary actions upon a determination by the board of medical examiners, provided for 2-15-1731, that a physician or a physician group has engaged in economically motivated referral patterns;~~

~~(iii)(D) adherence to a formulary approved by the medical staff; or~~

~~(iv)(E) other medical staff policy adopted to manage health care costs or improve quality.~~

[REMOVES OPTIONAL "OR" section]

~~(b)(d) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.~~

~~(e)(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.~~

~~(d)(f) "Physician" has the meaning provided in 37-3-102.~~

~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

SECTION 10. Section 50-5-207 **"50-5-207. (Temporary) Denial, suspension, or revocation of health care facility license -- provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except 50-5-117, is violated.

(2) The department may reduce a license to provisional status if:

~~(a) as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or~~

~~(b) the department has determined through an investigation under [section 4] that a health care facility contributed to a determination of unprofessional conduct under 37-1-316(19) or 37-1-410(1)(m) affecting a health care provider's license.~~

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court. (~~Terminates June 30, 2009—~~ sec. 6, Ch. 351, L. 2007.)

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license—provisional license.~~ (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

- ~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~
- ~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~
- ~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~
- ~~(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~
- ~~(e) There is cruelty or indifference affecting the welfare of the patients or residents.~~
- ~~(f) There is misappropriation of the property or funds of a patient or resident.~~
- ~~(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~
- ~~(h) Any provision of parts 1 through 3 is violated.~~

~~(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."~~

SECTION 11. Repealer. Section 6, Chapter 351, Laws of 2007, is repealed.

SECTION 12. {standard} Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [section 3].

SECTION 13. {standard} Effective date. [This act] is effective on passage and approval.

Please note: The changes to existing statutes are reflected by underlines or deletions. The changes to new sections not yet a statute are in plain text. You'll have to compare original with revised text to see changes that are not obvious.