

HOUSE BILL NO. 25

INTRODUCED BY D. ROBERTS

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING AND REVISING LAWS RELATED TO CERTAIN LICENSING BOARDS' MEDICAL ASSISTANCE PROGRAMS; REQUIRING PERIODIC AUDITS OF THE PROGRAMS; APPLYING CONFIDENTIALITY PROVISIONS TO THE PROGRAMS; REQUIRING BOARD ACTION ON CERTAIN PROGRAM VIOLATIONS; REQUIRING MEDICAL ASSISTANCE PROGRAMS FOR THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF PHARMACY; AMENDING SECTIONS 37-1-131, 37-3-203, 37-3-401, 37-4-311, 37-7-201, AND 37-8-202, MCA; AND REPEALING SECTION 37-3-208, MCA."

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

NEW SECTION. Section 1. Assistance program audits. (1) In each 10-year period, the medical assistance programs provided for in chapters 3, 4, 7, and 8 must be audited for performance objectives as determined by each licensing board in chapters 3, 4, 7, and 8 at least twice, as provided in subsections (2) and (3).

(2) Licensing boards in chapters 3, 4, 7, and 8 shall jointly contract and pay for an external audit of the relevant assistance program once every 5 years. The department shall assess the costs to each licensing board in chapters 3, 4, 7, and 8 for the external audit over a corresponding period.

(3) The department shall arrange for an internal audit midway through the subsequent 5-year period and shall assess costs to the licensing boards in chapters 3, 4, 7, and 8 for the internal audit, budgeting over the corresponding period.

NEW SECTION. Section 2. Confidentiality of medical assistance program information -- health care information. (1) The proceedings and records of a medical assistance program created in chapter 3, 4, 7, or 8 relating to a licensee who has received or is receiving assistance from the medical assistance program:

(a) are confidential and are considered to be proceedings and records of a professional standards review committee under 37-2-201; and

(b) are not subject to discovery or introduction into evidence in any administrative or judicial proceeding



1 other than a disciplinary proceeding against the licensee before the applicable licensing board. If the proceedings
 2 and records are introduced into evidence in a disciplinary proceeding, the introduced materials are public unless
 3 otherwise protected by law.

4 (2) Any health care information, as defined in 50-16-803, that is maintained by a health care provider
 5 in the provision of health care services to a licensee participating in a medical assistance program provided for
 6 in chapter 3, 4, 7, or 8 is subject to discovery from the licensee or the health care provider and to introduction into
 7 evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

8

9 **Section 3.** Section 37-1-131, MCA, is amended to read:

10 **"37-1-131. Duties of boards -- quorum required.** (1) A quorum of each board within the department
 11 shall:

12 (a) set and enforce standards and rules governing the licensing, certification, registration, and conduct
 13 of the members of the particular profession or occupation within the board's jurisdiction;

14 (b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or
 15 potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be
 16 conducted by a hearings examiner when required under 37-1-121.

17 (c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided
 18 in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the
 19 workers' compensation system in violation of the provisions of Title 39, chapter 71;

20 (d) take disciplinary action against the license of a person in a medical assistance program under chapter
 21 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of
 22 a prohibited or proscribed substance. THE REQUIREMENTS OF THIS SUBSECTION (1)(D) MAY NOT BE CONSTRUED AS
 23 AFFECTING THE RIGHTS OF AN EMPLOYER TO EVALUATE, DISCIPLINE, OR DISCHARGE AN EMPLOYEE.

24 ~~(d)~~(e) pay to the department the board's pro rata share of the assessed costs of the department under
 25 37-1-101(6);

26 ~~(e)~~(f) consult with the department before the board initiates a program expansion, under existing
 27 legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs
 28 associated with the proposed program expansion. The board may not expand a program if the board does not
 29 have adequate money and appropriation authority available.

30 (2) A board, board panel, or subcommittee convened to conduct board business must have a majority

1 of its members, which constitutes a quorum, present to conduct business.

2 (3) A board that requires continuing education or continued state, regional, or national certification for
3 licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of
4 this subsection for the renewal cycle.

5 (4) The board or the department program may:

6 (a) establish the qualifications of applicants to take the licensure examination;

7 (b) determine the standards, content, type, and method of examination required for licensure or
8 reinstatement of a license, the acceptable level of performance for each examination, and the standards and
9 limitations for reexamination if an applicant fails an examination;

10 (c) examine applicants for licensure at reasonable places and times as determined by the board or enter
11 into contracts with third-party testing agencies to administer examinations; and

12 (d) require continuing education for licensure, as provided in 37-1-306, or require continued state,
13 regional, or national certification for licensure. Except as provided in subsection (3), if the board or department
14 requires continuing education or continued state, regional, or national certification for continued licensure, the
15 board or department may not audit or require proof of continuing education or continued state, regional, or
16 national certification requirements as a precondition for renewing the license, certification, or registration. The
17 board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed
18 licenses for documentary verification of the continuing education requirement.

19 (5) A board may, at the board's discretion, request the applicant to make a personal appearance before
20 the board for nonroutine license applications as defined by the board.

21 (6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."
22

23 **Section 4.** Section 37-3-203, MCA, is amended to read:

24 **"37-3-203. Powers and duties.** (1) The board may:

25 (a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair,
26 impartial, and nondiscriminatory.

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

29 (c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the
30 prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this

1 chapter;

2 ~~(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board~~
 3 ~~and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of~~
 4 ~~addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;~~

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

7 ~~(f)(e)~~ fund additional staff, hired by the department, to administer the provisions of this chapter, by
 8 increasing license fees as necessary.

9 ~~(2) If the board establishes a program pursuant to subsection (1)(d), the~~ (a) The board shall establish
 10 a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board
 11 and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of
 12 addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

13 (b) The board shall ensure that a licensee who is required or volunteers to participate in the medical
 14 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll
 15 in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified
 16 treatment program outside the state unless the board finds that there is no qualified treatment program in this
 17 state. ~~A TREATMENT PROGRAM MAY NOT BE DISQUALIFIED ON THE BASIS THAT IT TREATS ONLY PROFESSIONALS. A~~
 18 ~~TREATMENT PROGRAM THAT IS ACCREDITED BY THE JOINT COMMISSION, FORMERLY THE JOINT COMMISSION ON~~
 19 ~~ACCREDITATION OF HEALTHCARE ORGANIZATIONS, OR THE COMMISSION ON ACCREDITATION OF REHABILITATION~~
 20 ~~FACILITIES AND LICENSED IN THIS STATE MUST BE CONSIDERED QUALIFIED TO TREAT MONTANA LICENSED~~
 21 ~~PROFESSIONALS.~~"

22

23 **Section 5.** Section 37-3-401, MCA, is amended to read:

24 **"37-3-401. Report of incompetence or unprofessional conduct.** (1) Notwithstanding any provision
 25 of state law dealing with confidentiality, each licensed physician, professional standards review organization, and
 26 the Montana medical association or any component society of the association shall and any other person may
 27 report to the board any information that the physician, organization, association, society, or person has that
 28 appears to show that a physician is:

29 (a) medically incompetent;

30 (b) mentally or physically unable to safely engage in the practice of medicine; or

1 (c) guilty of unprofessional conduct.

2 (2) (a) Information that relates to possible physical or mental impairment connected to habitual
3 intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to
4 other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the medical
5 assistance program established by the board under ~~37-3-203(1)(d)~~ 37-3-203, in lieu of reporting directly to the
6 board.

7 (b) The medical assistance program personnel referred to in subsection (2)(a) shall report to the board
8 the identity of a licensee and all facts and documentation in their possession if:

9 (i) the licensee fails or refuses to:

10 (A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical
11 dependency evaluation or a combination of evaluations;

12 ~~(ii)(B) the licensee fails or refuses to~~ undergo a reasonable course of recommended treatment ~~that they~~
13 ~~recommend~~, including reasonable aftercare;

14 ~~(iii)(C) the licensee fails or refuses to~~ satisfactorily complete a reasonable evaluation, a course of
15 treatment, or aftercare;

16 ~~(iv)(ii)~~ the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

17 ~~(v)(iii) they~~ the medical assistance program personnel are in possession of information that appears to
18 show that the licensee has or is otherwise engaged in unprofessional conduct.

19 (3) This section applies to professional standards review organizations only to the extent that the
20 organizations are not prohibited from disclosing information under federal law."

21

22 **Section 6.** Section 37-4-311, MCA, is amended to read:

23 "**37-4-311. Rehabilitation.** The board shall establish a ~~protocol for the referral to a board-approved~~
24 ~~rehabilitation or medical assistance~~ program ~~for~~ to assist and rehabilitate licensees who are subject to the
25 jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the
26 excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical
27 illness."

28

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

30 "**37-7-201. Organization -- powers and duties.** (1) The board shall meet at least once a year to

- 1 transact its business. The board shall annually elect from its members a president, vice president, and secretary.
- 2 (2) The board shall regulate the practice of pharmacy in this state, including but not limited to:
- 3 (a) establishing minimum standards for:
- 4 (i) equipment necessary in and for a pharmacy;
- 5 (ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the
- 6 practice of pharmacy, using an official compendium recognized by the board or current practical standards;
- 7 (iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures
- 8 for the storage, compounding, or dispensing of drugs and devices;
- 9 (iv) monitoring drug therapy; and
- 10 (v) maintaining the integrity and confidentiality of prescription information and other confidential patient
- 11 information;
- 12 (b) requesting the department to inspect, at reasonable times:
- 13 (i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded,
- 14 dispensed, or manufactured; and
- 15 (ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the
- 16 purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of
- 17 pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the
- 18 laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It
- 19 is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places
- 20 and making an inspection.
- 21 (c) regulating:
- 22 (i) the training, qualifications, employment, licensure, and practice of interns;
- 23 (ii) the training, qualifications, employment, and registration of pharmacy technicians; and
- 24 (iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and
- 25 poisons;
- 26 (d) examining applicants and issuing and renewing licenses of:
- 27 (i) applicants whom the board considers qualified under this chapter to practice pharmacy;
- 28 (ii) pharmacies and certain stores under this chapter;
- 29 (iii) wholesale drug distributors; and
- 30 (iv) persons engaged in the manufacture and distribution of drugs or devices;

1 (e) in concurrence with the board of medical examiners, defining the additional education, experience,
2 or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

3 (f) issuing certificates of "certified pharmacy" under this chapter;

4 (g) establishing and collecting license and registration fees;

5 (h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care
6 but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the
7 definition of the practice of pharmacy.

8 (i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the
9 jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the
10 excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical
11 illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical
12 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll
13 in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified
14 treatment program outside the state unless the board finds that there is no qualified treatment program in this
15 state. A TREATMENT PROGRAM MAY NOT BE DISQUALIFIED ON THE BASIS THAT IT TREATS ONLY PROFESSIONALS. A
16 TREATMENT PROGRAM THAT IS ACCREDITED BY THE JOINT COMMISSION, FORMERLY THE JOINT COMMISSION ON
17 ACCREDITATION OF HEALTHCARE ORGANIZATIONS, OR THE COMMISSION ON ACCREDITATION OF REHABILITATION
18 FACILITIES AND LICENSED IN THIS STATE MUST BE CONSIDERED QUALIFIED TO TREAT MONTANA LICENSED PROFESSIONALS.

19 ~~(j)~~(j) making rules for the conduct of its business;

20 ~~(j)~~(k) performing other duties and exercising other powers as this chapter requires;

21 ~~(k)~~(l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1
22 through 7 of this chapter, including but not limited to:

23 (i) requirements and qualifications for the transfer of board-issued licenses;

24 (ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy
25 interns;

26 (iii) qualifications and procedures for registering pharmacy technicians; and

27 (iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be
28 registered to practice telepharmacy across state lines.

29 (3) The board may:

30 (a) join professional organizations and associations organized exclusively to promote the improvement

1 of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose
2 activities assist and facilitate the work of the board; and

3 (b) establish standards of care for patients concerning health care services that a patient may expect
4 with regard to pharmaceutical care."

5

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

7 **"37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall:

8 (a) meet annually and elect from among the members a president and a secretary;

9 (b) hold other meetings when necessary to transact its business;

10 (c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

11 (d) provide for surveys of schools at times the board considers necessary;

12 (e) approve programs that meet the requirements of this chapter and of the board;

13 (f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or
14 removal of schools of nursing from the approved list;

15 (g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses
16 for prosecutions.

17 (h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses.

18 If considered appropriate for an advanced practice registered nurse who applies to the board for authorization,
19 prescriptive authority must be granted.

20 (i) establish a medical assistance program to assist licensed nurses who are found to be physically or
21 mentally impaired by ~~mental illness~~; habitual intemperance; or the excessive use of ~~narco~~ addictive drugs,
22 alcohol, or any other drug or substance or by mental illness or chronic physical illness. The program must provide
23 for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts
24 toward rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the
25 medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed
26 to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a
27 qualified treatment program outside the state unless the board finds that there is no qualified treatment program
28 in this state. ~~A TREATMENT PROGRAM MAY NOT BE DISQUALIFIED ON THE BASIS THAT IT TREATS ONLY PROFESSIONALS.~~
29 ~~A TREATMENT PROGRAM THAT IS ACCREDITED BY THE JOINT COMMISSION, FORMERLY THE JOINT COMMISSION ON~~
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1 ~~FACILITIES AND LICENSED IN THIS STATE MUST BE CONSIDERED QUALIFIED TO TREAT MONTANA LICENSED PROFESSIONALS.~~

2 For purposes of funding this medical assistance program, the board shall adjust the renewal fee to be
3 commensurate with the cost of the program.

4 (2) The board may:

5 (a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate
6 endorsement of licenses;

7 (b) define the educational requirements and other qualifications applicable to recognition of advanced
8 practice registered nurses. Advanced practice registered nurses are nurses who must have additional
9 professional education beyond the basic nursing degree required of a registered nurse. Additional education must
10 be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the
11 process of being certified by a certifying body for advanced practice registered nurses. Advanced practice
12 registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

13 (c) establish qualifications for licensure of medication aides, including but not limited to educational
14 requirements. The board may define levels of licensure of medication aides consistent with educational
15 qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the
16 type of drugs that are allowed to be administered and the method of administration.

17 (d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

18 (e) adopt rules necessary to administer this chapter; and

19 (f) fund additional staff, hired by the department, to administer the provisions of this chapter."
20

21 **NEW SECTION. Section 9. Repealer.** The following section of the Montana Code Annotated is
22 repealed:

23 37-3-208. Confidentiality of information -- physician assistance program.
24

25 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as
26 an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

27 (2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 2, part 2, and the
28 provisions of Title 37, chapter 2, part 2, apply to [section 2].

29 - END -