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SJ35 – Study Group 5 Response:

5) "provide policy considerations for the Legislature to use in reviewing creation of new boards."

- Such criteria should Not include any of the old Sunrise Criteria (2-8-204, MCA) that boards demonstrate that: "(1)(b) the scope of practice is readily identified and easily distinguished from the scope of practice of other professions and occupations;" and "(i) no other board licenses a similar or closely related occupation or profession".
    - Overlap of scope of practice is, in our opinion, the primary reason for opposition of new professional regulation (and/or legislative restriction of that new profession's scope).[1] We are adamantly against any resurrection of this type of language. If these criteria did not create the problem, it certainly has contributed to it and is particularly devastating to professions where such overlap exists. It is particularly harmful to Complementary and Alternative professions that are seeking recognition now.
    - Who would have thought 50-60 years ago that Complementary and Alternative Medicine (CAM) would be such the burgeoning industry? As such, professions that did not exist then now do, and they overlap with existing (licensed) professions. New professions will continue to emerge in the future. However, if the old sunrise criteria is re-adopted, the emergence of new professions will be impeded, and technologically, Montana will be left behind.
    - Professional scopes do overlap. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting access via adherence to outdated criteria limits the consumer's possibilities for health and healing and is therefore harmful.

- Emerging CAM professions should not be lumped under the Alternative Health Care Board (AHCB). It the same as saying that all health care professions such as nursing, occupational therapy, physical therapy and so on, should be regulated by the Board of Medical Examiners.
    - Lumping all CAM professions under this board undermines the legislative intent for creating the AHCB. When the AHCB was created, the legislative intent was to provide a mechanism for small professions to be able to afford a board by providing an umbrella board, not create a dumping ground for all CAM professions.
    - If the profession is large enough to sustain its own board, it should be allowed its own board. If the profession is not large enough to be self-sustaining for a reasonable cost for licensure, then put it under a "combined" board that is either the Alternative Health Care Board, or a "big board" that is in the CAM field most closely related.

[1] It was even mentioned in the report: *Board ABCs* in the *Overlapping functions/scope of practice/dual licensure* section: "Discussions ensued regarding … dual licensure for physical therapists trained as athletic trainers and **how much to limit the scope of practice to avoid conflicts with other healthcare practitioners** [our emphasis]. In the end, the discussions came too late in the legislative session to resolve all difficulties."

Suggestion: Restructure Licensing so as to have an Allopathic Medical Bureau/Division that provides oversight to all allopathic professional boards, and a CAM Bureau/Division that provides oversight to the AHCB and other emerging professional boards.

- Protection of the Public Criteria:
  Before determining the answer to any "public health, safety, and welfare issue, define what that means first. Determine what criteria must be met in order to protect the public. Meeting any **one** of the criteria (health, safety, welfare, common good) should suffice.
  - Criteria should include protection of the "common good"
    In *Board ABC's*, in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".
    It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope.
  - Protection of access to a profession (with its commonly accepted scope of practice intact) is a public health issue.
    As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scope of practice because there is a perception that to license additional professions with overlapping or similar scopes can be harmful to already licensed professions. This bias can be found in the repealed sunrise statutes. (MCA 2-8-204 (2)(g)(ii)). This restriction of access is particularly harmful to Complementary/Alternative Medicine (CAM) professions, as these emerging professions are quashed before they are able to become established legally._Consequently, the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting access limits the consumer's possibilities for health and healing and is therefore harmful.
      There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:
      1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)
      2. Create competency-based scopes of practice that allow for overlap of scopes of practice
      3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.

- Title licensure should be granted to "non-invasive" professions (such as massage therapy). Practice acts should be reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).
  - In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.

- We believe that a title act/ board serves the consumer/public and the profession by:
    1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
    2. defining standards so that consumers can be fully informed
    3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.

Additional Questions:

1) If no board existed (exists) for your profession or occupation, how would you prove it is necessary for public health, welfare, or safety? (e.g. Some components that you might like to address would be: how do licensing, discipline, a board (instead of a program), regulation beyond discipline fit into serving public health, welfare, or safety? What would be your definitions of health, welfare, or safety?)

- Defining "public health, safety, and welfare issue"
  Meeting any **one** of the criteria should suffice.
    - The Definition should also include "common good"

      In *Board ABC's*, in the "Board Creation" Subsection, you state that "Usually the constituency provides a public rationale for the existence of a board in terms of protecting public health, safety, welfare, or the "common good".

      A definition needs to be developed for the term "common good." When licensing/creating a board for the profession, while the threshold of physical "harm" may be small or the other criteria may not be met, it is important to legislate in order to protect the existence of the profession. It is not done for the profession's sake, it is done to protect the consumer by ensuring that the consumer has access to a wide variety of services at a reasonable cost. It is not in the common good to limit or restrict professional scope of practice if another profession already "claims" that portion of the scope. Such limits create state-sanctioned monopolies and drives up consumer costs, while decreasing the availability of services.
    - "Health and Welfare" should include protection of access to a profession (with its commonly accepted scope of practice intact). Denial of services harms the public. Consumers should have the right to seek out health care from the provider of their choice, and have available to them the full scope of practice of that practitioner.

      As a non-regulated profession that would like to be regulated, the threat to our scope of practice by already regulated professions is very real. Yet, there is a bias to limit or restrict scopes of practice as there is a perception that already licensed professions are harmed if new professions' scopes are allowed to overlap, *even if the national standards of the profession being limited include that competency*. We believe that the public is actually harmed when access to services is decreased or limited to one type of service by limiting a profession's scope. Each profession delivers a particular service in a unique way. The service delivered by one profession may not work for a consumer, but if delivered in a different way, by a different profession, would work. Limiting scopes of practice and limiting access limits the consumer's possibilities for health and healing and is therefore harmful.

      There are several ways for the legislature to protect access to a profession with its commonly accepted scope of practice intact, to ensure the survival of marginalized or currently unregulated professions:
        1. Pass a Freedom of Access Law similar to Minnesota, California or Rhode Island (modeled after MN)

2. Create competency-based scopes of practice that allow for overlap of scopes of practice. Boards and Licensure should be geared toward competency: if the professional is trained in that competency, then they should be able to perform that competency.
3. Adopt a stance that overlapping scopes of practice do indeed exist, and instead of limiting it, embracing it: it will actually benefit the consumer, drive down costs, enhance competition, and improve accessibility to services.

- Protecting the public's health, safety, welfare and common good also includes granting Title licensure to "non-invasive" professions (such as massage therapy). Practice acts should be reserved for the professions that require a high threshold of public safety (for example: the Practice of Medicine).
    - In Title Acts, the title is reserved for those meeting the practice criteria, but the practice is not restricted (as long as the title is not used, a practitioner may perform the practice). Since "harm" is not an issue with the public for these professions, restriction of practice is not necessary.
    - We believe that a title act/ board serves the consumer/public and the profession by:
        1. defining (thus protecting) the scope of practice of the profession which ensures consumer access
        2. defining standards so that consumers can be fully informed
        3. providing a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.

All of the following functions of board / licensing are important to the protection of the public.

With Regard to Licensure:

- licensure defines standards of practice, so that consumers can be fully informed as to what constitutes the standard
- licensure creates a mechanism for consumers to find "qualified" practitioners
- licensure provides a mechanism for discipline for those either misusing the title or exceeding scope, or for other kinds of misconduct that could arise.
- licensure defines (thus protects) the scope of practice of the profession which ensures consumer access to that profession

With Regard to a Board:

- There are the usual tasks performed by any board and they apply here as well. Boards are better suited to address these issues than delegating them to a non-professional or departmental employee:
    - Refuse to issue or renew or may suspend, revoke, censure, reprimand, restrict or limit the license of or fine anyone in violation
    - Adopt, amend and enforce rules consistent with the law relative to consumer health, safety and welfare
        - Establish minimum standards of practice and code of conduct via rulemaking
            - Establish and enforce criteria for professional standards and rules of conduct
    - Determine what is and is not unprofessional conduct
    - Establish and enforce criteria for continuing competence
    - Makes recommendations for further training, standards, education.
    - A Board provides a place for consumers to complain

While there are nationally accepted guidelines for massage therapists, there are still atypical types and forms of training, such as apprenticeships. A Board made up of professionals and consumers would be able to ensure that qualified persons are not overlooked due to atypical training, nor allow unqualified persons to become licensed because of lack of knowledge on the part of departmental personnel. Our understanding is that this happened with the nursing board recently. A Board would:

- Screen atypical applications
- Define what training is valid.

2) How do you think fees should be determined? (What are the basic costs? Should there be different levels of boards or programs to meet different costs?)

The BLMTB has no informed comment on this, although we tend to lean toward a "fee for service" scheme.