

HOUSE BILL NO. 580

INTRODUCED BY T. SCHMIDT, E. FRANKLIN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COMPLAINTS OF UNPROFESSIONAL CONDUCT BY LICENSED OR CERTIFIED HEALTH CARE OR REHABILITATIVE SERVICES PROVIDERS FROM PERSONS DETAINED IN COUNTY DETENTION CENTERS OR INCARCERATED UNDER LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS MUST BE SUBMITTED TO A REVIEW TEAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE PRIOR TO BEING FILED WITH A LICENSING BOARD; AMENDING SECTION 37-1-308, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 37-1-308, MCA, is amended to read:

"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception exceptions. (1) Except as provided in ~~subsection~~ ~~subsections~~ SUBSECTION (3) and (4), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

~~———— (3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2).~~

(4)(3) A person under legal custody of a county detention center OR INCARCERATED UNDER LEGAL CUSTODY

1 OF THE DEPARTMENT OF CORRECTIONS may not file a complaint under subsection (1) against a licensed or certified
 2 provider of health care or rehabilitative services for services that were provided to the person while detained or
 3 confined in a county detention center OR INCARCERATED UNDER LEGAL CUSTODY OF THE DEPARTMENT OF
 4 CORRECTIONS unless the complaint is first reviewed by a correctional health care review team provided for in
 5 [section 2]."

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7 **NEW SECTION. Section 2. Correctional health care review team.** (1) There is a correctional health
 8 care review team process in the department. The purpose of a review team is to review complaints filed by an
 9 inmate against a licensed or certified provider of health care or rehabilitative services for services that were
 10 provided to the person while the person was detained or confined in a county detention center OR INCARCERATED
 11 UNDER LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS. The inmate may file a complaint directly with the
 12 correctional health care review team for review or, if a board receives a complaint that has not been reviewed,
 13 the board shall forward the complaint to the review team. If the review team has reason to believe that there has
 14 been a violation of this part arising out of health care or rehabilitative services provided to a person detained or
 15 confined in a county detention center, the review team shall report the possible violation to the department for
 16 appropriate action under 37-1-308.

17 (2) Each health care licensing board shall solicit and submit to the department a list of licensed or
 18 certified health care or rehabilitative service professionals who have correctional health care experience and who
 19 are interested in participating on a team. A current board member may not participate on a review team. The
 20 department shall solicit FROM THE ADMINISTRATORS OF THE COUNTY DETENTION CENTERS AND FROM THE DEPARTMENT
 21 OF CORRECTIONS names of licensed or certified health care or rehabilitative service providers ~~from the~~
 22 ~~administrators of the county detention centers~~ who have correctional health care or rehabilitative services
 23 experience and are interested in participating on a review team. Each member of a review team must have at
 24 least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

25 (3) Each correctional health care review team is composed of three members who shall represent health
 26 care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated
 27 persons. Two members of the review team must be providers of the same discipline and scope of practice as the
 28 provider against whom a complaint was filed and the third member may be a provider of any other health care
 29 or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a
 30 correctional health care professional employed by the department of corrections and appointed by the director

1 of the department of corrections may participate on the review team, EXCEPT WHEN THE PROVIDER AGAINST WHOM
2 THE COMPLAINT WAS FILED WAS EMPLOYED BY THE DEPARTMENT OF CORRECTIONS.

3 (4) The members of a review team are appointed by the department from the listing of health care and
4 rehabilitative service providers with correctional experience who have been submitted by each respective board
5 ~~or~~, a county detention center administrator, OR THE DEPARTMENT OF CORRECTIONS as provided in subsection (2).
6 A review team shall meet at least twice a year. Any ~~administrative costs~~ TRAVEL, LODGING, MEAL, OR
7 MISCELLANEOUS COSTS incurred by a review team may be recovered through a memorandum of understanding
8 with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying
9 boards of health care and rehabilitative service providers.

10 (5) The review team shall review each complaint with regard to the health care or rehabilitative services
11 provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority
12 of the review team. The review team shall submit a written response regarding the decision to the inmate, the
13 county detention center administrator OR THE DEPARTMENT OF CORRECTIONS, and the health care or rehabilitative
14 services provider. If the decision is to not forward the ~~violation~~ COMPLAINT for action under 37-1-308, a record of
15 the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

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

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20 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1999.

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