

HOUSE BILL NO. 183
INTRODUCED BY C. JUNEAU

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE OF ADDICTION COUNSELORS; SUBSTITUTING LICENSURE OF ADDICTION COUNSELORS FOR CERTIFICATION OF CHEMICAL DEPENDENCY COUNSELORS; REMOVING CERTAIN EDUCATIONAL REQUIREMENTS FORMERLY NECESSARY FOR CERTIFICATION; AMENDING SECTIONS 33-22-702, 33-22-705, 33-32-102, 37-23-201, 37-35-101, 37-35-102, 37-35-103, 37-35-201, 37-35-202, 37-35-203, 37-35-301, 37-35-304, 45-5-624, 45-9-208, 45-10-108, 50-5-101, 53-24-301, AND 61-8-732, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

Section 1. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or ~~chemical dependency~~ addiction counselor ~~certified~~ licensed by the state; and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208.

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

- (i) present distress or a painful symptom;
- (ii) a disability or impairment in one or more areas of functioning; or
- (iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

- (i) a developmental disorder;
 - (ii) a speech disorder;
 - (iii) a psychoactive substance use disorder;
 - (iv) an eating disorder, except for bulimia and anorexia nervosa;
 - (v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania; or
 - (vi) a severe mental illness as provided in 33-22-706.
- (5) "Outpatient benefits" are as set forth in 33-22-705."

Section 2. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the

necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or ~~chemical dependency~~ addiction counselor ~~certified~~ licensed by the department of commerce under Title 37, chapter 35."

Section 3. Section 33-32-102, MCA, is amended to read:

"33-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, ~~certified chemical dependency~~ licensed addiction counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and scope of employment.

(3) "Health care services" means the health care and services provided by health care providers, including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies.

(4) (a) "Utilization review" means a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective, when the review will be ~~utilized~~ used directly or indirectly in order to determine whether the health care services will be paid, covered, or provided.

(b) Utilization review does not include routine claim administration or determination that does not include determinations of medical necessity or appropriateness."

Section 4. Section 37-23-201, MCA, is amended to read:

"37-23-201. Representation or practice as licensed clinical professional counselor -- license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the

person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or ~~chemical dependency~~ addiction counselor ~~certified~~ licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned

graduate program, as required by 37-23-202(1)(a), or is working to complete the 3,000 hours of social work experience, as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 5. Section 37-35-101, MCA, is amended to read:

"37-35-101. Purpose. The legislature finds and declares that because the profession of ~~chemical dependency~~ addiction counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring the ethical, qualified, and professional practice of ~~chemical dependency~~ addiction counseling. This chapter and the rules promulgated under 37-35-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of ~~chemical dependency~~ addiction counseling as ~~certified chemical dependency~~ licensed addiction counselors."

Section 6. Section 37-35-102, MCA, is amended to read:

"37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting association for institutions of higher learning.

~~(2) "Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of this chapter.~~

~~(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment. "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. This The term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare chemical dependency, as defined in 53-24-103.~~

~~(4) (3) "Department" means the department of commerce provided for in 2-15-1801.~~

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter."

Section 7. Section 37-35-103, MCA, is amended to read:

"37-35-103. Department powers and duties. (1) The department shall:

- (a) examine, ~~certify license~~, and renew the ~~certificates~~ licenses of qualified applicants;
 - (b) adopt rules:
 - (i) for eligibility requirements and competency standards;
 - (ii) prescribing the time, place, content, and passing requirements of the ~~certification licensure~~ and competency examinations and passing scores for ~~certification licensure~~ under 37-35-202;
 - (iii) for application forms and fees for ~~certification licensure~~ and for renewal and ~~certification licensure~~ expiration dates; and
 - (iv) defining any unprofessional conduct that is not included in 37-1-316; and
 - (c) adopt and implement rules for training programs, internships, and continuing education requirements to ensure the quality of ~~chemical dependency addiction~~ counseling.
- (2) The department may:
- (a) adopt rules necessary to implement the provisions of this chapter;
 - (b) adopt rules specifying the scope of ~~chemical dependency addiction~~ counseling that are consistent with the education required by 37-35-202; and
 - (c) establish ~~recertification relicensure~~ requirements and procedures that the department considers appropriate."

Section 8. Section 37-35-201, MCA, is amended to read:

"37-35-201. Certificate License required -- exceptions. (1) Except as otherwise provided in this chapter, a person may not practice ~~chemical dependency addiction~~ counseling or represent to the public that the person is a ~~certified chemical dependency licensed addiction~~ counselor unless the person is ~~certified licensed~~ under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

- (a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a ~~certified chemical dependency licensed addiction~~ counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an

activity or service of the profession as long as the person does not represent by title that the person is a ~~certified chemical dependency~~ licensed addiction counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student, intern, or resident in ~~chemical dependency~~ addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;

(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) of a person who is working to satisfactorily complete supervised ~~chemical dependency~~ addiction counseling experience required for ~~certification~~ licensure.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana."

Section 9. Section 37-35-202, MCA, is amended to read:

"37-35-202. Certification Licensure requirements -- examination -- fees. (1) To be eligible for ~~certification~~ licensure as a ~~chemical dependency~~ an addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for ~~certification~~ licensure as a ~~certified chemical dependency~~ licensed addiction counselor if the person has:

(a) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(b) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(c) successfully completed at least 1 year of formalized training in ~~chemical dependency~~ addiction counseling in a program approved by the department or recognized under the laws of another state.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in ~~a chemical dependency~~ an addiction treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a ~~certificate~~ license to practice as a ~~certified chemical dependency~~ licensed addiction counselor in this state may use the title "~~certified chemical dependency~~ licensed addiction counselor".

Section 10. Section 37-35-202, MCA, is amended to read:

"37-35-202. Certification Licensure requirements -- examination -- fees. (1) To be eligible for ~~certification~~ licensure as a ~~chemical dependency~~ an addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for ~~certification~~ licensure as a ~~certified chemical dependency~~ licensed addiction counselor if the person has:

———~~(a)~~ received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field or has completed core course requirements, as defined by the department in administrative rules, from an accredited college or university;

———~~(b)~~ received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

———~~(c)~~ successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in ~~a chemical dependency~~ an addiction treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a ~~certificate~~ license to practice as a ~~certified chemical dependency~~ licensed

addiction counselor in this state may use the title "~~certified chemical dependency~~ licensed addiction counselor"."

Section 11. Section 37-35-203, MCA, is amended to read:

"37-35-203. Renewal of certificate license -- application and fee. (1) A certificate license expires biennially on the date set by department rule.

(2) A certificate license holder may renew a certificate license by:

(a) filing an application on a form prescribed by the department; and

(b) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a ~~certified chemical dependency~~ licensed addiction counselor in this state.

(5) A certificate license not renewed within 1 year following its expiration date terminates automatically."

Section 12. Section 37-35-301, MCA, is amended to read:

"37-35-301. Unprofessional conduct complaint -- sanctions. (1) A formal complaint alleging unprofessional conduct by a ~~certified chemical dependency~~ licensed addiction counselor may be directed to the department. The charges must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The complaint may allege any unprofessional conduct contained in 37-1-316 or as further defined by department rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to the practice of a ~~certified chemical dependency~~ licensed addiction counselor.

(3) The director of the department shall appoint a review panel to investigate a complaint of unprofessional conduct directed to the department. The panel must consist of:

(a) two ~~certified chemical dependency~~ licensed addiction counselors;

(b) one employee of the department; and

(c) two members of the public.

(4) The panel shall recommend to the department either that the person be cleared of any charges or that a sanction or combination of sanctions contained in 37-1-312 be imposed.

(5) For the purposes of this section, the department is vested with a board's authority for the purposes of the procedures in 37-1-307 through 37-1-318 regarding unprofessional conduct, and 37-1-301 through

37-1-318 apply to any proceeding under this section."

Section 13. Section 37-35-304, MCA, is amended to read:

"37-35-304. Transition -- transfer of certificates. The department shall grant a certificate license to practice as a licensed addiction counselor without the need for further application or other requirements to those persons holding a current, unrestricted certificate as a certified chemical dependency counselor as of July 1, 1997 October 1, 2001, that was issued by the department of public health and human services state."

Section 14. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance:

(a) for the first offense, shall be fined an amount not to exceed \$100 and:

(i) must have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and shall be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) shall be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, shall be fined an amount not to exceed \$200 and:

(i) must have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) shall be ordered to perform community service if a community service program is available; and

(iii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse

information course, if one is available;

(c) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$500 and:

(i) must have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, must have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) shall be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense, shall be fined an amount not to exceed \$50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, shall be fined an amount not to exceed \$100 and:

(i) shall be ordered to perform community service if a community service program is available; and

(ii) must have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, shall be fined an amount not to exceed \$200 and:

(i) shall be ordered to perform community service if a community service program is available;

(ii) must have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) shall be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may, in the sentencing court's discretion and upon recommendation of a ~~certified chemical dependency~~ licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50 if the person was 18 years of age or older at the time that the offense was committed or \$100 if the person was under 18 years of age at the time that the

offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

Section 15. Section 45-9-208, MCA, is amended to read:

"45-9-208. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a ~~certified chemical dependency~~ licensed addiction counselor working with the person recommends treatment."

Section 16. Section 45-10-108, MCA, is amended to read:

"45-10-108. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a ~~certified chemical dependency~~ licensed addiction counselor working with the

person recommends treatment."

Section 17. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers

regulated under Title 37, including ~~chemical dependency~~ addiction counselors. The term includes chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals

specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmery--A" provides outpatient and inpatient care;

(b) an "infirmery--B" provides outpatient care only.

(25) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(26) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(27) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(28) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(29) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include observation beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(41) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(42) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(43) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's

condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(44) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department."

Section 18. Section 53-24-301, MCA, is amended to read:

"53-24-301. Treatment of the chemically dependent. (1) An applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain confirmation from a ~~certified chemical dependency~~ licensed addiction counselor that the applicant is chemically dependent and appropriate for inpatient, freestanding care as described in the administrative rules. The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, the proposed patient, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who is admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is chemically dependent and requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient

is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a parent, a legal guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent person was the original applicant."

Section 19. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) a chemical dependency assessment;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a ~~certified chemical dependency~~ licensed addiction counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a ~~certified chemical dependency~~ licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a ~~certified chemical dependency~~ licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a ~~certified chemical dependency~~ licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an

appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a ~~certified chemical dependency~~ licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

NEW SECTION. Section 20. Effective dates. (1) [Sections 1 through 9 and 11 through 19 and this section] are effective on passage and approval.

(2) [Section 10] is effective July 1, 2005.

NEW SECTION. Section 21. Termination. [Section 9] terminates June 30, 2005.

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