

1 HOUSE BILL NO. 43

2 INTRODUCED BY RHONDA KNUDSEN

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ~~TELEMEDICINE~~
6 TELEHEALTH; PROHIBITING CERTAIN CONTRACT PROVISIONS THAT IMPOSE SITE RESTRICTIONS
7 ON TELEHEALTH; PROVIDING THAT A PREVIOUSLY ESTABLISHED PATIENT-HEALTH CARE
8 PROVIDER RELATIONSHIP IS NOT REQUIRED TO RECEIVE SERVICES BY ~~TELEMEDICINE~~
9 TELEHEALTH; REVISING THE DEFINITION OF TELEMEDICINE; EXTENDING THE COVERAGE
10 REQUIREMENT TO PUBLIC EMPLOYEE BENEFIT PLANS AND SELF-INSURED STUDENT HEALTH
11 PLANS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-18-704, 20-25-1303, 20-25-
12 1403, 33-22-138, ~~AND 37-3-102~~, 37-11-101, 37-11-105, AND 50-46-302, MCA; AND PROVIDING A DELAYED
13 EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 2-18-704, MCA, is amended to read:

18 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must
19 contain provisions that permit:

20 (a) the member of a group who retires from active service under the appropriate retirement provisions
21 of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19,
22 chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered
23 employment to remain a member of the group until the member becomes eligible for medicare under the
24 federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group
25 plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed
26 and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or
27 greater benefits at an equivalent cost;

28 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is

1 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is
2 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible
3 for equivalent insurance coverage as provided in subsection (1)(a);

4 (c) the surviving children of a member to remain members of the group as long as they are eligible for
5 retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage
6 as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a
7 surviving parent or legal guardian.

8 (2) An insurance contract or plan issued under this part must contain the provisions of subsection (1)
9 for remaining a member of the group and also must permit:

10 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

11 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

12 (c) continued membership in the group by anyone eligible under the provisions of this section,
13 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

14 (3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a
15 member of the state's group plan until the legislator becomes eligible for medicare under the federal Health
16 Insurance for the Aged Act if the legislator:

17 (i) terminates service in the legislature and is a vested member of a state retirement system provided
18 by law; and

19 (ii) notifies the department of administration in writing within 90 days of the end of the legislator's
20 legislative term.

21 (b) A former legislator may not remain a member of the group plan under the provisions of subsection
22 (3)(a) if the person:

23 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

24 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with
25 substantially the same or greater benefits at an equivalent cost.

26 (c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and
27 subsequently terminates membership may not rejoin the group plan unless the person again serves as a
28 legislator.

1 (4) (a) A state insurance contract or plan must contain provisions that permit continued membership
2 in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues
3 to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall
4 notify the department of administration in writing within 90 days of the end of the judge's judicial service of the
5 judge's choice to continue membership in the group plan.

6 (b) A former judge may not remain a member of the group plan under the provisions of this
7 subsection (4) if the person:

8 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

9 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with
10 substantially the same or greater benefits at an equivalent cost; or

11 (iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

12 (c) A judge who remains a member of the group under the provisions of this subsection (4) and
13 subsequently terminates membership may not rejoin the group plan unless the person again serves in a
14 position covered by the state's group plan.

15 (5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay
16 the full premium for coverage and for that of the person's covered dependents.

17 (6) An insurance contract or plan issued under this part that provides for the dispensing of
18 prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

19 (a) must permit any member of a group to obtain prescription drugs from a pharmacy located in
20 Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions,
21 including the same professional requirements that are met by the mail service pharmacy for a drug, without
22 financial penalty to the member; and

23 (b) may only be with an out-of-state mail service pharmacy that is registered with the board under
24 Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

25 (7) An insurance contract or plan issued under this part must include coverage for:

26 (a) treatment of inborn errors of metabolism, as provided for in 33-22-131; ~~and~~

27 **(b) telemedicine TELEHEALTH services, as provided for in 33-22-138; and**

28 **(b)(c) therapies for Down syndrome, as provided in 33-22-139.**

1 (8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in
2 a member's family must provide coverage for well-child care for children from the moment of birth through 7
3 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in
4 force in the contract or plan.

5 (b) Coverage for well-child care under subsection (8)(a) must include:

6 (i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory
7 tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and
8 treatment services program provided for in 53-6-101; and

9 (ii) routine immunizations according to the schedule for immunization recommended by the
10 immunization practice advisory committee of the U.S. department of health and human services.

11 (c) Minimum benefits may be limited to one visit payable to one provider for all of the services
12 provided at each visit as provided for in this subsection (8).

13 (d) For purposes of this subsection (8):

14 (i) "developmental assessment" and "anticipatory guidance" mean the services described in the
15 Guidelines for Health Supervision II, published by the American academy of pediatrics; and

16 (ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or
17 a health care professional supervised by a physician.

18 (9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a
19 dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in
20 the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans
21 issued under this part, the premium charged for the additional coverage of a dependent, as defined in the
22 insurance contract or plan, may be required to be paid by the insured and not by the employer.

23 (10) Prior to issuance of an insurance contract or plan under this part, written informational materials
24 describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan
25 member.

26 (11) The state employee group benefit plans and the Montana university system group benefits plans
27 must provide coverage for hospital inpatient care for a period of time as is determined by the attending
28 physician and, in the case of a health maintenance organization, the primary care physician, in consultation

1 with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection
2 for the treatment of breast cancer.

3 (12) (a) The state employee group benefit plans and the Montana university system group benefits
4 plans must provide coverage for outpatient self-management training and education for the treatment of
5 diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

6 (b) Coverage must include a \$250 benefit for a person each year for medically necessary and
7 prescribed outpatient self-management training and education for the treatment of diabetes.

8 (c) The state employee group benefit plans and the Montana university system group benefits plans
9 must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes,
10 injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips,
11 visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps,
12 one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United
13 States food and drug administration, and glucagon emergency kits.

14 (d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university
15 group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in
16 which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

17 (e) Annual copayment and deductible provisions are subject to the same terms and conditions
18 applicable to all other covered benefits within a given policy.

19 (f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement,
20 accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana
21 university system as benefits to employees, retirees, and their dependents.

22 (13) (a) The state employee group benefit plans and the Montana university system group benefits
23 plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game
24 warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-
25 17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or
26 volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b),
27 the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this
28 section must provide for the same level of benefits as is available to other members of the group. Premiums

1 charged to a spouse or dependent under this section must be the same as premiums charged to other similarly
2 situated members of the group. Dependent special enrollment must be allowed under the terms of the
3 insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent
4 who is insured under a COBRA continuation provision.

5 (b) The state employee group benefit plans and the Montana university system group benefits plans
6 subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or
7 dependent only if:

8 (i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms
9 of the state employee group benefit plans and the Montana university system group benefits plans or if the
10 plans have not received timely premium payments;

11 (ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an
12 intentional misrepresentation of a material fact under the terms of the coverage; or

13 (iii) the state employee group benefit plans and the Montana university system group benefits plans
14 are ceasing to offer coverage in accordance with applicable state law.

15 (14) The state employee group benefit plans and the Montana university system group benefits plans
16 must comply with the provisions of 33-22-153.

17 (15) An insurance contract or plan issued under this part and a group benefits plan issued by the
18 Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter
19 22, part 7. (See compiler's comments for contingent termination of certain text.)"

20

21 **Section 2.** Section 20-25-1303, MCA, is amended to read:

22 **"20-25-1303. Duties of commissioner -- group benefits plans and employee premium levels not**
23 **mandatory subjects for collective bargaining.** (1) The commissioner shall:

24 (a) design group benefits plans and establish premium levels for employees;

25 (b) establish specifications for bids and accept or reject bids for administering group benefits plans;

26 (c) negotiate and administer contracts for group benefits plans;

27 (d) prepare an annual report that:

28 (i) describes the group benefits plans being administered; and

- 1 (ii) details the historical and projected program costs and the status of reserve funds; and
 2 (e) adopt policies for the conduct of business of the advisory committee and to carry out the
 3 provisions of this part.

4 (2) (a) The Except as provided in subsection (2)(b), the provisions of Title 33 do not apply to the
 5 commissioner when exercising the duties provided for in this part.

6 (b) Group benefit plans designed under this part must include coverage for telemedicine-TELEHEALTH
 7 services as provided in 33-22-138.

8 (3) The design or modification of group benefits plans and the establishment of employee premium
 9 levels are not mandatory subjects for collective bargaining under Title 39, chapter 31."

10

11 **Section 3.** Section 20-25-1403, MCA, is amended to read:

12 **"20-25-1403. Authorization to establish self-insured health plan for students -- requirements --**
 13 **exemption.** (1) The commissioner may establish a self-insured student health plan for enrolled students of the
 14 system and their dependents, including students of a community college district. In developing a self-insured
 15 student health plan, the commissioner shall:

16 (a) maintain the plan on an actuarially sound basis;

17 (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the
 18 plan; and

19 (c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the
 20 plan. The deposits must be expended for claims under the plan and for the costs of administering the plan,
 21 including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary
 22 reinsurance, and repaying debts.

23 (2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult
 24 with affected parties, including but not limited to the board of regents and representatives of enrolled students
 25 of the system.

26 (3) A self-insured student health plan developed under this part is not responsible for and may not
 27 cover any services or pay any expenses for which payment has been made or is due under an automobile,
 28 premises, or other private or public medical payment coverage plan or provision or under a workers'

1 compensation plan or program, except when the other payor is required by federal law to be a payor of last
 2 resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications,
 3 or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

4 (4) The provisions of 20-25-1315 through 20-25-1320 apply to any self-insured student health plan
 5 developed under this part.

6 (5) ~~(a) The~~ Except as provided in subsection (5)(b), the provisions of Title 33 do not apply to the
 7 commissioner when exercising the duties provided for in this part.

8 (b) A self-insured student health plan established under this part must include coverage for
 9 telemedicine-TELEHEALTH services as provided in 33-22-138."

10

11 **Section 4.** Section 33-22-138, MCA, is amended to read:

12 **"33-22-138. Coverage for ~~telemedicine-TELEHEALTH~~ services -- rulemaking.** (1) Each group or
 13 individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care
 14 services agreement that provides coverage for health care services must provide coverage for health care
 15 services provided by a health care provider or health care facility by means of ~~telemedicine-TELEHEALTH~~ if the
 16 services are otherwise covered by the policy, certificate, contract, or agreement.

17 (2) A POLICY, CERTIFICATE, CONTRACT, OR AGREEMENT MAY NOT:

18 (A) IMPOSE RESTRICTIONS INVOLVING:

19 (I) THE SITE AT WHICH THE PATIENT IS PHYSICALLY LOCATED AND RECEIVING HEALTH CARE SERVICES BY
 20 MEANS OF TELEHEALTH; OR

21 (II) THE SITE AT WHICH THE HEALTH CARE PROVIDER IS PHYSICALLY LOCATED AND PROVIDING THE SERVICES BY
 22 MEANS OF TELEHEALTH; OR

23 (B) DISTINGUISH BETWEEN TELEHEALTH SERVICES PROVIDED TO PATIENTS IN RURAL LOCATIONS AND
 24 TELEHEALTH SERVICES PROVIDED TO PATIENTS IN URBAN LOCATIONS.

25 ~~(2)~~ (3) Coverage under this section must be equivalent to the coverage for services that are provided
 26 in person by a health care provider or health care facility.

27 ~~(3)~~ (4) Nothing in this section may be construed to require:

28 (a) a health insurance issuer to provide coverage for services that are not medically necessary,

1 subject to the terms and conditions of the insured's policy; or

2 (B) COVERAGE OF AN OTHERWISE NONCOVERED BENEFIT;

3 ~~(b)~~ (C) a health care provider to be physically present with a patient at the site where the patient is
4 located unless the health care provider who is providing health care services by means of ~~telemedicine~~
5 TELEHEALTH determines that the presence of a health care provider is necessary; or

6 ~~(e)~~ (D) except as provided in 50-46-310 OR AS PROVIDED IN TITLE 37 AND RELATED ADMINISTRATIVE
7 RULES, a patient to have a previously established patient-provider relationship with a specific health care
8 provider in order to receive health care services by means of ~~telemedicine~~ TELEHEALTH.

9 ~~(4)~~ (5) Coverage under this section may be subject to deductibles, coinsurance, and copayment
10 provisions. Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to
11 other medical services covered under the plan may not be imposed on the coverage for services provided by
12 means of ~~telemedicine~~ TELEHEALTH.

13 ~~(5)~~ (6) This section does not apply to disability income, hospital indemnity, medicare supplement,
14 specified disease, or long-term care policies.

15 ~~(6)~~ (7) The commissioner may adopt rules necessary to implement the provisions of this section.

16 ~~(6)~~ ~~(7)~~ (8) For the purposes of this section, the following definitions apply:

17 (a) "Health care facility" means a critical access hospital, hospice, hospital, long-term care facility,
18 mental health center, outpatient center for primary care, or outpatient center for surgical services licensed
19 pursuant to Title 50, chapter 5.

20 (b) "Health care provider" means an individual:

21 (i) licensed pursuant to Title 37, chapter 3, 4, 6, 7, 10, 11, 15, 17, 20, 22, 23, 24, 25, 26, or 35;

22 (ii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an
23 advanced practice registered nurse;

24 (iii) certified by the American board of genetic counseling as a genetic counselor; or

25 (iv) certified by the national certification board for diabetes educators as a diabetes educator. ~~(e)~~

26 ~~"Store and forward technology" means electronic information, imaging, and communication that is transferred,~~
27 ~~recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or health care~~
28 ~~facility at a distant site without the patient present in real time. The term includes interactive audio, video, and~~

1 ~~data communication.~~

2 ~~(d) (C) (i) "Telemedicine TELEHEALTH" means the use of interactive audio, video, or other~~
 3 ~~telecommunications technology or media, including audio-only communication, e-mail and facsimile~~
 4 ~~transmission, that is:~~

5 (A) ~~used by a health care provider or health care facility to deliver health care services in real time or~~
 6 ~~through the use of store and forward technology at a site other than the site where the patient is located; and~~

7 (B) ~~delivered over a secure connection or in a manner that complies with the requirements of the~~
 8 ~~Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq STATE AND FEDERAL~~
 9 ~~PRIVACY LAWS.~~

10 ~~(ii) The term includes the use of electronic media for consultation relating to the health care diagnosis~~
 11 ~~or treatment of a patient in real time or through the use of store and forward technology.~~

12 ~~(II) THE TERM DOES NOT INCLUDE DELIVERY OF HEALTH CARE SERVICES BY MEANS OF FACSIMILE MACHINES OR~~
 13 ~~ELECTRONIC MESSAGING ALONE. THE USE OF FACSIMILE AND ELECTRONIC MESSAGE IS NOT PRECLUDED IF USED IN~~
 14 ~~CONJUNCTION WITH OTHER AUDIO, VIDEO, OR TELECOMMUNICATIONS TECHNOLOGY OR MEDIA.~~

15 ~~(iii)(ii) (III) The For physicians providing written certification of a debilitating medical condition pursuant~~
 16 ~~to 50-46-310, the term does not include the use of audio-only telephone, e-mail, or facsimile transmissions~~
 17 ~~audio-only communication unless the physician has previously established a physician-patient relationship~~
 18 ~~through an in-person encounter."~~

19

20 **Section 5.** Section 37-3-102, MCA, is amended to read:

21 **"37-3-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
 22 apply:

23 (1) "ACGME" means the accreditation council for graduate medical education.

24 (2) "AOA" means the American osteopathic association.

25 (3) "Approved internship" means an internship training program of at least 1 year in a program that
 26 either is approved for intern training by the AOA or conforms to the standards for intern training established by
 27 the ACGME or successors. However, the board may, upon investigation, approve any other internship.

28 (4) "Approved medical school" means a school that either is accredited by the AOA or conforms to the

1 education standards established by the LCME or the world health organization or successors for medical
2 schools that meet standards established by the board by rule.

3 (5) "Approved residency" means a residency training program conforming to the standards for
4 residency training established by the ACGME or successors or approved for residency training by the AOA.

5 (6) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

6 (7) "Community-integrated health care" means the provision of out-of-hospital medical services that
7 an emergency care provider with an endorsement may provide as determined by board rule.

8 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
9 17.

10 (9) "Emergency care provider" or "ECP" means a person licensed by the board, including but not
11 limited to an emergency medical responder, an emergency medical technician, an advanced emergency
12 medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-
13 integrated health care.

14 (10) "LCME" means the liaison committee on medical education.

15 (11) "Medical assistant" means an unlicensed allied health care worker who functions under the
16 supervision of a physician, physician assistant, or podiatrist in a physician's or podiatrist's office and who
17 performs administrative and clinical tasks.

18 (12) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy
19 and who has a valid license to practice medicine or osteopathic medicine in this state.

20 (13) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the
21 holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases,
22 injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities,
23 including electronic and technological means such as telemedicine. If a person who does not possess a license
24 to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of
25 this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of
26 this chapter. (14) "STORE-AND-FORWARD TECHNOLOGY" MEANS ELECTRONIC INFORMATION, IMAGING, AND
27 COMMUNICATION THAT IS TRANSFERRED, RECORDED, OR OTHERWISE STORED IN ORDER TO BE REVIEWED AT A LATER
28 DATE BY A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY AT A DISTANT SITE WITHOUT THE PATIENT PRESENT IN

1 REAL TIME. THE TERM INCLUDES INTERACTIVE AUDIO, VIDEO, AND DATA COMMUNICATION.~~(14) (a) "Telemedicine"~~
 2 ~~means the practice of medicine using interactive electronic communications, information technology, or other~~
 3 ~~means between a licensee in one location and a patient in another location with or without an intervening health~~
 4 ~~care provider. Telemedicine typically involves the application of secure videoconferencing or store-and-forward~~
 5 ~~technology, as defined has the meaning provided in33-22-138.~~

6 ~~(b) The term does not mean an audio-only telephone conversation, an e-mail or instant messaging~~
 7 ~~conversation, or a message sent by facsimile transmission.~~

8 (15) (A) "TELEMEDICINE" MEANS THE PRACTICE OF MEDICINE USING INTERACTIVE ELECTRONIC
 9 COMMUNICATIONS, INFORMATION TECHNOLOGY, AUDIO-ONLY CONVERSATIONS, OR OTHER MEANS BETWEEN A LICENSEE
 10 IN ONE LOCATION AND A PATIENT IN ANOTHER LOCATION WITH OR WITHOUT AN INTERVENING HEALTH CARE PROVIDER.
 11 TELEMEDICINE INCLUDES THE APPLICATION OF SECURE VIDEOCONFERENCING OR STORE-AND-FORWARD TECHNOLOGY.

12 (B) THE TERM DOES NOT MEAN AN E-MAIL OR INSTANT MESSAGING CONVERSATION OR A MESSAGE SENT BY
 13 FACSIMILE TRANSMISSION.

14 (C) FOR PHYSICIANS PROVIDING WRITTEN CERTIFICATION OF A DEBILITATING MEDICAL CONDITION PURSUANT
 15 TO 50-46-310, THE TERM DOES NOT INCLUDE AUDIO-ONLY COMMUNICATION UNLESS THE PHYSICIAN HAS PREVIOUSLY
 16 ESTABLISHED A PHYSICIAN-PATIENT RELATIONSHIP THROUGH AN IN-PERSON ENCOUNTER."

17

18 **SECTION 6.** SECTION 37-11-101, MCA, IS AMENDED TO READ:

19 **"37-11-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
 20 definitions apply:

21 (1) "Board" means the board of physical therapy examiners provided for in 2-15-1748.

22 (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
 23 17.

24 (3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or
 25 revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined
 26 by the board.

27 (4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

28 (5) "Physical therapist assistant" or "assistant" means a person who:

- 1 (a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;
- 2 (b) assists a physical therapist in the practice of physical therapy but who may not make evaluations
3 or design treatment plans; and
- 4 (c) is supervised by a licensed physical therapist as described in 37-11-105.
- 5 (6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical
6 therapist assistant curriculum and who as part of the clinical and educational training is practicing under the
7 supervision of a licensed physical therapist as described in 37-11-105.
- 8 (7) "Physical therapy" means the evaluation, treatment, and instruction of human beings, in person or
9 through telemedicine, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily
10 malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed
11 topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a
12 physical or mental disability.
- 13 (8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy,
14 whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed
15 physical therapist assistant as described in 37-11-105.
- 16 (9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or
17 "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases
18 are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not
19 include certified corrective therapists or massage therapists.
- 20 (10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an
21 accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical
22 training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as
23 described in 37-11-105.
- 24 (11) ~~Telemedicine~~ Telehealth has the meaning provided in 33-22-138.
- 25 (12) "Topical medications" means medications applied locally to the skin and includes only medications
26 listed in 37-11-106(2) for which a prescription is required under state or federal law."
27

28 **SECTION 7. SECTION 37-11-105, MCA, IS AMENDED TO READ:**

1 **"37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy**
2 **student, or physical therapist assistant student.** (1) A physical therapist assistant shall practice under the
3 supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This
4 supervision requires the licensed physical therapist to make an onsite visit or a visit by means of ~~telemedicine~~
5 telehealth to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever
6 occurs first.

7 (2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or
8 the equivalent. This supervision does not require the presence of the assistant.

9 (3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist
10 or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the
11 equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent
12 or two assistants and two aides or the equivalent.

13 (4) A physical therapy student or physical therapist assistant student shall practice with the onsite
14 supervision of a licensed physical therapist."
15

16 **SECTION 8. SECTION 50-46-302, MCA, IS AMENDED TO READ:**

17 **"50-46-302. Definitions.** As used in this part, the following definitions apply:

18 (1) "Canopy" means the total amount of square footage dedicated to live plant production at a
19 registered premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

20 (2) "Chemical manufacturing" means the production of marijuana concentrate.

21 (3) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to
22 which an individual may be ordered by any court of competent jurisdiction.

23 (4) "Debilitating medical condition" means:

24 (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune
25 deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the
26 patient's health status;

27 (b) cachexia or wasting syndrome;

28 (c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily

1 activities as documented by the patient's treating physician;

2 (d) intractable nausea or vomiting;

3 (e) epilepsy or an intractable seizure disorder;

4 (f) multiple sclerosis;

5 (g) Crohn's disease;

6 (h) painful peripheral neuropathy;

7 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

8 (j) admittance into hospice care in accordance with rules adopted by the department; or

9 (k) posttraumatic stress disorder.

10 (5) "Department" means the department of public health and human services provided for in 2-15-
11 2201.

12 (6) "Dispensary" means a registered premises from which a provider or marijuana-infused products
13 provider is approved by the department to dispense marijuana or marijuana-infused products to a registered
14 cardholder.

15 (7) (a) "Employee" means an individual employed to do something for the benefit of an employer.

16 (b) The term includes a manager, agent, or director of a partnership, association, company,
17 corporation, limited liability company, or organization.

18 (c) The term does not include a third party with whom a licensee has a contractual relationship.

19 (8) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly
20 through a business, an investment, or a spouse, parent, or child relationship, to 1% or more of the net profits or
21 net worth of the entity in which the interest is held.

22 (9) "Local government" means a county, a consolidated government, or an incorporated city or town.

23 (10) "Marijuana" has the meaning provided in 50-32-101.

24 (11) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the
25 resin extracted from any part of the marijuana plant.

26 (12) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and
27 byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused
28 products.

1 (13) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use
2 by a registered cardholder by a means other than smoking.

3 (b) The term includes but is not limited to edible products, ointments, and tinctures.

4 (14) (a) "Marijuana-infused products provider" means a person licensed by the department to
5 manufacture and provide marijuana-infused products for a registered cardholder.

6 (b) The term does not include the cardholder's treating or referral physician.

7 (15) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

8 (16) "Paraphernalia" has the meaning provided in 45-10-101.

9 (17) "Person" means an individual, partnership, association, company, corporation, limited liability
10 company, or organization.

11 (18) (a) "Provider" means a person licensed by the department to assist a registered cardholder as
12 allowed under this part.

13 (b) The term does not include a cardholder's treating physician or referral physician.

14 (19) "Referral physician" means an individual who:

15 (a) is licensed under Title 37, chapter 3; and

16 (b) is the physician to whom a patient's treating physician has referred the patient for physical
17 examination and medical assessment.

18 (20) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical
19 condition who has received and maintains a valid registry identification card.

20 (21) "Registered premises" means the location at which a provider or marijuana-infused products
21 provider:

22 (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-
23 infused products will be manufactured for registered cardholders; or

24 (b) has established a dispensary for sale of marijuana or marijuana-infused products to registered
25 cardholders.

26 (22) "Registry identification card" means a document issued by the department pursuant to 50-46-303
27 that identifies an individual as a registered cardholder.

28 (23) (a) "Resident" means an individual who meets the requirements of 1-1-215.

1 (b) An individual is not considered a resident for the purposes of this part if the individual:

2 (i) claims residence in another state or country for any purpose; or

3 (ii) is an absentee property owner paying property tax on property in Montana.

4 (24) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son,
5 daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-
6 law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister,
7 stepson, stepdaughter, stepgrandparent, or stepgrandchild.

8 (25) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and
9 12 inches in diameter.

10 (26) "Standard of care" means, at a minimum, the following activities when undertaken in person or
11 through the use of telemedicine by a patient's treating physician or referral physician if the treating physician or
12 referral physician is providing written certification for a patient with a debilitating medical condition:

13 (a) obtaining the patient's medical history;

14 (b) performing a relevant and necessary physical examination;

15 (c) reviewing prior treatment and treatment response for the debilitating medical condition;

16 (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the
17 debilitating medical condition;

18 (e) discussing with the patient and ensuring that the patient understands the advantages,
19 disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

20 (f) monitoring the response to treatment and possible adverse effects; and

21 (g) creating and maintaining patient records that remain with the physician.

22 (27) "State laboratory" means the laboratory operated by the department to conduct environmental
23 analyses.

24 (28) "Telemedicine" has the meaning provided in ~~33-22-138~~ 37-3-102.

25 (29) "Testing laboratory" means a qualified person, licensed by the department, who meets the
26 requirements of 50-46-311 and:

27 (a) provides testing of representative samples of marijuana and marijuana-infused products; and

28 (b) provides information regarding the chemical composition, the potency of a sample, and the

1 presence of molds, pesticides, or other contaminants in a sample.

2 (30) "Treating physician" means an individual who:

3 (a) is licensed under Title 37, chapter 3; and

4 (b) has a bona fide professional relationship with the individual applying to be a registered cardholder.

5 (31) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any
6 marijuana derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical
7 condition.

8 (b) The term does not include the seeds, stalks, and roots of the plant.

9 (32) "Written certification" means a statement signed by a treating physician or referral physician that
10 meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."
11

12 **NEW SECTION. Section 9. Effective date.** [This act] is effective January 1, 2022.

13 - END -