

1 HOUSE BILL NO. 495

2 INTRODUCED BY M. CAFERRO

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HEALTH CARE LAWS; CREATING A
5 HEALTH CARE PROVIDER TASK FORCE; ESTABLISHING MEMBERSHIP; REQUIRING THE
6 DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE CLERICAL AND ADMINISTRATIVE SERVICES
7 TO THE TASK FORCE; PROVIDING FOR TASK FORCE DUTIES AND REPORTING REQUIREMENTS;
8 REQUIRING THE TASK FORCE TO ELIMINATE RULES THAT ARE DUPLICATIVE AND INCONSISTENT
9 WITH CURRENT HEALTH CARE PROVIDER PRACTICES; REVISING THE DEFINITION OF "HEALTH CARE
10 PROVIDER" AS IT RELATES TO SAFETY DEVICES IN LONG-TERM CARE FACILITIES; AMENDING
11 SECTIONS 50-5-1201, 50-5-1202, 50-5-1203, 50-5-1204, AND 50-5-1205, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

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16 NEW SECTION. **Section 1. Health care provider task force -- duties -- membership.** (1) Within
17 existing resources, there is a multidisciplinary health care provider task force administratively attached to the
18 business standards division of the department of labor and industry as prescribed in 2-15-121 to carry out the
19 duties described in this section.

20 (2) The task force consists of five members as follows:

21 (a) one member who represents the business standards division of the department of labor and
22 industry;

23 (b) one member who represents the board of medical examiners;

24 (c) one member who represents the board of nursing;

25 (d) one member who represents the department of public health and human services; and

26 (e) one member who represents the insurance commissioner of the state auditor's office.

27 (3) The task force must include other stakeholders in the review required under this section as
28 necessary.

1 (4) The members shall serve without compensation by the task force but may be reimbursed for travel
2 expenses as provided in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees
3 of the state or of any political subdivision of the state are entitled to their regular compensation.

4 (5) The department of labor and industry shall provide clerical and administrative staff services to the
5 task force.

6 (6) The task force shall elect a presiding officer.

7 (7) The task force shall identify definitions and areas in which the Montana Code Annotated:

8 (a) duplicates federal regulations;

9 (b) duplicates or contradicts rules or policies established for health care providers by other
10 departments;

11 (c) applies inconsistently across the regions or by the state;

12 (d) creates the potential for the waste of resources;

13 (e) causes access issues; or

14 (f) increases cost.

15 (8) Based on the areas identified pursuant to subsection (7), the task force shall review the related
16 administrative rules, policies, and procedures to:

17 (a) eliminate rules, policies, or procedures that are determined to not be cost effective; and

18 (b) create consistency in the application of a rule, policy, or procedure as it applies to health care
19 providers.

20 (9) The task force shall develop a written plan that:

21 (a) outlines the process and deadline for completing the initial review of the rules, policies, and
22 procedures; and

23 (b) establishes a process and timeline for an ongoing review, in conjunction with providers, that will
24 continue to identify and correct areas of duplication, inconsistency, or waste.

25 (10) The task force shall complete its work and issue a report in accordance with 5-11-120 of its
26 findings and recommendations to the children, families, health, and human services interim committee provided
27 for in 5-5-225 by September 15, 2022. The report must include:

28 (a) a summary of the written plan as required under subsection (9); and

1 (b) draft legislation, including a list of affected statutes requiring amendment as a result of the task
2 force.

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4 **Section 2.** Section 50-5-1201, MCA, is amended to read:

5 **"50-5-1201. Use of safety devices -- request and consent -- allowed individuals -- intent.** (1) The
6 following individuals may request the use of and provide informed consent for the use of certain safety devices
7 aimed at ensuring the physical safety of the resident by reducing the risk of falls and injuries associated with a
8 resident's medical symptom even if the resident cannot easily remove the device or the device restricts the
9 resident's total freedom of movement:

10 (a) a resident;

11 (b) a family member of a resident who is unable to make decisions because the resident has a
12 communication barrier or has been found by a ~~physician~~ health care provider to be medically incapable of
13 granting informed consent, as provided in 50-5-1203;

14 (c) a guardian, as defined in 72-1-103; or

15 (d) a person granted the power of attorney for health care decisions.

16 (2) A concern for a resident's physical safety or a resident's fear of falling may provide the basis for a
17 medical symptom. A safety device may not be used for the convenience of staff or for disciplinary purposes.

18 (3) This part is intended to provide residents and authorized or designated representatives with the
19 authority to request and consent to the use of safety devices but is not intended to interfere with the right of
20 licensed health care providers acting within their scope of practice to recommend and order treatments and
21 services, including physical restraints, for residents in their care."

22

23 **Section 3.** Section 50-5-1202, MCA, is amended to read:

24 **"50-5-1202. Definitions.** As used in this part, the following definitions apply:

25 (1) "Department" means the department of public health and human services provided for in 2-15-
26 2201.

27 (2) "Health care provider" means a physician, physician assistant, or advanced practice registered
28 nurse.

1 ~~(2)~~(3) "Long-term care facility" means a licensed facility that provides skilled nursing care or
2 intermediate nursing care or that is an assisted living facility, as defined in 50-5-101.

3 ~~(3)~~(4) "Medical symptom" means an indication of a physical or psychological condition or of a physical
4 or psychological need expressed by the patient.

5 ~~(4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.~~

6 (5) "Resident" means a person who lives in a long-term care facility.

7 (6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

8 (b) The term does not include protective restraints as defined in 21 CFR 880.6760."

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10 **Section 4.** Section 50-5-1203, MCA, is amended to read:

11 **"50-5-1203. Procedures -- informed consent -- physician health care provider involvement.** (1)

12 Upon receiving a request for use of a safety device, a long-term care facility shall inform the requestor of the
13 alternatives and risks associated with the use of the safety device. The long-term care facility shall provide the
14 requested safety device to the resident upon receipt of:

15 (a) a signed consent form authorizing its use and acknowledging receipt of specific information about
16 available alternatives and risks; and

17 (b) a written order from the attending physician health care provider that specifies the circumstances
18 under and the duration for which the safety device may be used and the medical symptoms that the safety
19 device is intended to address.

20 (2) The requirements of subsection (1) do not apply if a side rail or other device is used only as an
21 assistive device and does not restrict the resident's movement from bed or chair."

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23 **Section 5.** Section 50-5-1204, MCA, is amended to read:

24 **"50-5-1204. Long-term care facility procedures.** A long-term care facility that provides a safety
25 device under 50-5-1203 shall:

26 (1) document that the procedures outlined in 50-5-1203 have been followed;

27 (2) monitor the use of the safety device in accordance with accepted standards of practice;

28 (3) reevaluate the resident's need for the safety device, no less than quarterly, in consultation with the

1 resident, the resident's family, and the attending ~~physician~~ health care provider."

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3 **Section 6.** Section 50-5-1205, MCA, is amended to read:

4 **"50-5-1205. Survey compliance and department enforcement -- rulemaking authority.** (1) The
5 department is granted rulemaking authority for the purposes of implementing this part.

6 (2) When determining compliance with state and federal standards for the use of a safety device, the
7 department is bound by the statements and determinations contained in the attending ~~physician's~~ health care
8 provider's order regarding medical symptoms. A written order from the attending ~~physician~~ health care provider
9 that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical
10 necessity of the safety device.

11 (3) A long-term care facility may not be subject to fines, civil penalties, or other state or federal survey
12 enforcement remedies solely as the result of allowing the use of a safety device as authorized in this part.

13 (4) This section does not preclude the department from taking action to protect the safety and health
14 of the resident if there is clear and convincing evidence that:

15 (a) the use of the safety device has jeopardized the health and safety of the resident; and

16 (b) the long-term care facility has failed to take reasonable measures to protect the health and safety
17 of the resident."

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19 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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21 **NEW SECTION. Section 9. Termination.** [Section 1] terminates September 30, 2022.

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