

HOUSE BILL NO. 937

INTRODUCED BY L. SHELDON-GALLOWAY, S. GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ABORTION CLINICS; PROVIDING DEFINITIONS; PROVIDING FOR ANNUAL LICENSURE FEES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-5-101, MCA."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

- (1) (a) "Abortion clinic" means a facility that:
 - (i) performs surgical abortion procedures; or
 - (ii) provides an abortion-inducing drug.
- (b) The term does not include:
 - (i) a hospital as defined in 50-5-101;
 - (ii) a critical access hospital as defined in 50-5-101;
 - (iii) an outpatient center for surgical services as defined in 50-5-101; or
 - (iv) a facility that provides, prescribes, administers, or dispenses an abortion-inducing drug to fewer than five patients each year.
- (2) (a) "Abortion-inducing drug" means a medicine, drug, or other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman.
 - (b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.
 - (c) The term does not include the use of drugs that may be known to cause an abortion if the drugs are prescribed for a medical indication other than abortion.
- (3) "Affiliate" means an organization that directly or indirectly:
 - (a) owns or controls another organization;

1 (b) is owned or controlled, in whole or in part, by another organization;

2 (c) is related by shareholdings or other means of control to another organization;

3 (d) is a parent or subsidiary of another organization; or

4 (e) is under common control with another organization.

5 (4) "Medical practitioner" means a person authorized under 50-20-109 to perform an abortion in
6 this state.

7

8 **NEW SECTION. Section 2. Licensure of abortion clinics -- application -- fee.** (1) A person may
9 not operate or advertise the operation of an abortion clinic unless the person is licensed by the department.

10 (2) An applicant for licensure as an abortion clinic shall apply on a form prescribed by the
11 department containing information requested by the department pursuant to [section 3], including:

12 (a) an attestation that the applicant is of reputable and responsible character and is able to comply
13 with rules adopted under [section 3];

14 (b) the name of the applicant;

15 (c) the location of the abortion clinic and the name of the person in charge of the abortion clinic;

16 (d) the qualifications of the applicant or of the medical practitioners employed by or to be employed
17 by the abortion clinic to perform surgical abortion procedures or to prescribe, administer, or provide abortion-
18 inducing drugs; and

19 (e) disclosures regarding:

20 (i) whether the applicant or an owner or affiliate of the applicant operated an abortion clinic that
21 was closed as a direct result of patient health and safety;

22 (ii) whether an owner or clinic staff member has been convicted of a felony offense; and

23 (iii) whether an owner or clinic staff member was ever employed by a facility owned or operated by
24 the applicant that closed because of administrative or legal action.

25 (3) An applicant for licensure shall include with the application copies of:

26 (a) administrative and legal documentation relating to information required under subsections
27 (2)(e)(i) and (2)(e)(ii);

28 (b) inspection reports, if any; and

1 (c) violation remediation contracts, if any.

2

3 **NEW SECTION. Section 3. Department regulation of abortion clinics -- rulemaking.** (1) In
4 accordance with Title 50, chapter 5, the department shall license and regulate abortion clinics as provided in
5 [sections 1 through 4] and shall enforce the provisions of [sections 1 through 4].

6 (2) The department shall adopt administrative rules for the licensure and operation of abortion
7 clinics, including rules:

8 (a) establishing minimum license qualifications;

9 (b) establishing requirements for:

10 (i) sanitation standards;

11 (ii) staff qualifications;

12 (iii) necessary emergency equipment;

13 (iv) providing emergency care;

14 (v) monitoring patients after the administration of anesthesia;

15 (vi) providing follow-up care for patient complications;

16 (vii) quality assurance;

17 (viii) infection control;

18 (ix) the architecture or layout of an abortion clinic;

19 (x) providing to patients a hotline telephone number to assist women who are coerced into an
20 abortion or who are victims of sex trafficking; and

21 (xi) obtaining annual training by law enforcement on identifying and assisting women who are
22 coerced into an abortion or who are victims of sex trafficking;

23 (c) establishing operating policies for maintaining medical records, including the requirement that
24 forms requiring a patient signature be stored in the patient's medical record;

25 (d) establishing procedures for the issuance, renewal, denial, and revocation of licenses, including:

26 (i) the form and content of the license; and

27 (ii) the collection of an annual license fee of \$450, payable to the department for deposit in the
28 general fund;

- 1 (e) establishing procedures and standards for inspections; and
- 2 (f) establishing procedures for addressing any violations of this section or rules adopted pursuant
- 3 to this section.

4

5 **NEW SECTION. Section 4. Inspections.** In accordance with Title 50, chapter 5, the department shall

6 inspect an abortion clinic at least once each calendar year. If the department receives a complaint involving an

7 abortion clinic, the department may conduct additional investigations as needed.

8

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

10 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly

11 indicates otherwise, the following definitions apply:

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

13 (2) "Accreditation association for ambulatory health care" means the organization nationally

14 recognized by that name that surveys outpatient centers for surgical services upon their requests and grants

15 accreditation status to the outpatient centers for surgical services that it finds meet its standards and

16 requirements.

17 (3) "Activities of daily living" means tasks usually performed in the course of a normal day in a

18 resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

19 (4) "Adult day-care center" means a facility, freestanding or connected to another health care

20 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily

21 living but that does not provide overnight care.

22 (5) (a) "Adult foster care home" means a private home or other facility that offers, except as

23 provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons

24 who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under

25 the full guardianship of the owner or manager.

26 (b) As used in this subsection (5), the following definitions apply:

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

28 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or

1 disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific
2 person is available to meet those basic needs.

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

5 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing
6 such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
7 administration.

8 (B) The term does not include the administration of prescriptive medications.

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

12 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates
13 personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-
14 related services.

15 (8) "Capital expenditure" means:

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

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

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

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

26 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical,
27 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of
28 materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or

1 treatment of a disease or assessment of a medical condition.

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

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

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

11 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
12 persons who require supportive services and housing.

13 (16) "Construction" means the physical erection of a new health care facility and any stage of the
14 physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

15 (a) an existing health care facility; or

16 (b) a long-term care facility as defined in 50-5-301.

17 (17) "Council on accreditation" means the organization nationally recognized by that name that
18 surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment
19 facilities, and mental health centers upon their requests and grants accreditation status to programs and
20 facilities that it finds meet its standards and requirements.

21 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
22 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-
23 5-233.

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

26 (20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys
27 hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and
28 requirements.

1 (21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

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

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

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

7 (25) "Healthcare facilities accreditation program" means the program nationally recognized by that
8 name that surveys health care facilities upon their requests and grants accreditation status to a health care
9 facility that it finds meets its standards and requirements.

10 (26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
11 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
12 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
13 individual. The term includes abortion clinics as defined in [section 1], chemical dependency facilities, critical
14 access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home
15 infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities
16 for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for
17 primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and
18 residential treatment facilities.

19 (b) The term does not include offices of private physicians, dentists, or other physical or mental
20 health care workers regulated under Title 37, including licensed addiction counselors.

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

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

27 (29) "Home infusion therapy services" means the preparation, administration, or furnishing of
28 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.

1 The services include an educational component for the patient, the patient's caregiver, or the patient's family
2 member.

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

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

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

12 (31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
13 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
14 Except as otherwise provided by law, services provided must include medical personnel available to provide
15 emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority.
16 A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days
17 a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

18 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
19 tubercular patients; and

20 (ii) specialty hospitals.

21 (b) The term does not include critical access hospitals.

22 (c) The emergency care requirement for a hospital that specializes in providing health services for
23 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
24 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by
25 licensed registered nurses.

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

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

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

2 (33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a
3 facility that provides intermediate developmental disability care for two or more persons.

4 (b) The term does not include community homes for persons with developmental disabilities that
5 are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
6 52-4-203.

7 (34) "Intermediate developmental disability care" means the provision of intermediate nursing care
8 services, health-related services, and social services for persons with a developmental disability, as defined in
9 53-20-102, or for persons with related problems.

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

13 (36) "Licensed health care professional" means a licensed physician, physician assistant, advanced
14 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
15 department of labor and industry.

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

19 (b) The term does not include community homes for persons with developmental disabilities
20 licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203;
21 youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar
22 accommodations providing for transients, students, or individuals who do not require institutional health care; or
23 correctional facilities operating under the authority of the department of corrections.

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

25 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
26 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a
27 longer period is required because transfer to a hospital is precluded because of inclement weather or
28 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction

1 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
2 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
3 of the individual.

4 (b) either is located in a county with fewer than six residents a square mile or is located more than
5 35 road miles from the nearest hospital.

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

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

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

13 (42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
14 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational
15 functions of a youth and that:

16 (i) serves either adjudicated or nonadjudicated youth;

17 (ii) charges a fee for its services; and

18 (iii) provides all or part of its services in the outdoors.

19 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl
20 scouts, 4-H clubs, or other similar organizations.

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

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

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

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

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

5 (48) "Practitioner" means an individual licensed by the department of labor and industry who has
6 assessment, admission, and prescription authority.

7 (49) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24
8 hours by a patient recovering from surgery or other treatment.

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

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

14 (52) "Residential care facility" means an adult day-care center, an adult foster care home, an
15 assisted living facility, or a retirement home.

16 (53) "Residential psychiatric care" means active psychiatric treatment provided in a residential
17 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or
18 behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the
19 individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's
20 discharge to less restrictive levels of care at the earliest possible time.

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

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

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

27 (57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the
28 diagnosis, care, or treatment of one or more of the following categories:

- 1 (i) patients with a cardiac condition;
- 2 (ii) patients with an orthopedic condition;
- 3 (iii) patients undergoing a surgical procedure; or
- 4 (iv) patients treated for cancer-related diseases and receiving oncology services.

5 (b) For purposes of this subsection (57), a specialty hospital may provide other services for
 6 medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise
 7 provided by law if the care encompasses 35% or less of the hospital services.

8 (c) The term "specialty hospital" does not include:

- 9 (i) psychiatric hospitals;
- 10 (ii) rehabilitation hospitals;
- 11 (iii) children's hospitals;
- 12 (iv) long-term care hospitals; or
- 13 (v) critical access hospitals.

14 (58) "State long-term care facilities plan" means the plan prepared by the department to project the
 15 need for long-term care facilities within Montana and approved by the governor and a statewide health
 16 coordinating council appointed by the director of the department.

17 (59) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
 18 acute care or extended skilled nursing care to a patient.

19 (60) "The joint commission" means the organization nationally recognized by that name that surveys
 20 health care facilities upon their requests and grants accreditation status to a health care facility that it finds
 21 meets its standards and requirements."

22

23 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4] are intended to be
 24 codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1
 25 through 4].

26 - END -