

SENATE BILL NO. 564

INTRODUCED BY T. MCGILLVRAY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA HEALTH CORPS ACT; EXPANDING

5 ELIGIBILITY FOR SERVICES PROVIDED BY HEALTH CORPS PHYSICIANS; REVISING LEGAL LIABILITY

6 PROVISIONS FOR SERVICES PROVIDED BY HEALTH CORP PHYSICIANS; REVISING THE APPLICATION

7 FEE FOR INITIAL ENROLLMENT IN THE HEALTH CORPS PROGRAM; PROVIDING A DEFINITION;

8 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 27-1-736, 37-3-203, 37-3-802, 37-3-803,

9 37-3-804, 37-3-805, AND 37-3-806, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY

10 DATE, AND A TERMINATION DATE."

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

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14 **Section 1.** Section 27-1-736, MCA, is amended to read:

15 **"27-1-736. Limits on liability of medical practitioner or dental hygienist who provides services**

16 **without compensation.** (1) A medical practitioner, as defined in 37-2-101, or a dental hygienist licensed under

17 Title 37, chapter 4, who renders, at any site, any health care within the scope of the provider's license,

18 voluntarily and without compensation, to a patient of a clinic, to a patient referred by a clinic, or in a community-

19 based program to provide access to health care services for uninsured persons is not liable to a person for civil

20 damages resulting from the rendering of the care unless the damages were the result of gross negligence or

21 willful or wanton acts or omissions by the medical practitioner or dental hygienist. Each patient must be given

22 notice that under state law the medical practitioner or dental hygienist cannot be held legally liable for ordinary

23 negligence if the medical practitioner or dental hygienist does not have malpractice insurance.

24 (2) A physician participating in the Montana health corps act provided for in Title 37, chapter 3,

25 part 8, is immune from liability as provided in 37-3-806.

26 ~~(2)~~(3) For purposes of this section:

27 (a) "clinic" means a place for the provision of health care to patients that is organized for the

28 delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;

1 (b) "community-based program to provide access to health care services for uninsured persons"
 2 means a local program in which care is provided without compensation to individuals who have been referred
 3 through that community-based program and in which the medical practitioner or dental hygienist has entered
 4 into a written agreement to provide the service;

5 (c) "health care" has the meaning provided in 50-16-504;

6 (d) "without compensation" means that the medical practitioner or dental hygienist voluntarily
 7 rendered health care without receiving any reimbursement or compensation, except for reimbursement for
 8 supplies.

9 ~~(3)~~(4) Subsection (1) applies only to a medical practitioner or dental hygienist who:

10 (a) does not have malpractice insurance coverage because the medical practitioner or dental
 11 hygienist is retired or is otherwise not engaged in active practice; or

12 (b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for
 13 services provided under this section."

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15 **Section 2.** Section 37-3-203, MCA, is amended to read:

16 **"37-3-203. Powers and duties -- rulemaking authority.** (1) The board may:

17 (a) adopt rules necessary or proper to carry out the requirements in ~~Title 37, chapter 3, parts 1~~
 18 ~~through 4, this chapter~~ and of chapters covering podiatry, acupuncture, physician assistants, nutritionists, and
 19 emergency care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively. Rules
 20 adopted for emergency care providers with an endorsement to provide community-integrated health care must
 21 address the scope of practice, competency requirements, and educational requirements.

22 (b) hold hearings and take evidence in matters relating to the exercise and performance of the
 23 powers and duties vested in the board;

24 (c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this
 25 chapter as well as Title 37, chapters 6, 13, 20, and 25, and Title 50, chapter 6, regarding emergency care
 26 providers licensed by the board. The board also may assist the county attorneys of this state in the prosecution
 27 of persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection
 28 (1)(c).

1 (d) review certifications of disability and determinations of eligibility for a permit to hunt from a
2 vehicle as provided in 87-2-803(11); and

3 (e) fund additional staff, hired by the department, to administer the provisions of this chapter, by
4 increasing license fees as necessary.

5 (2) (a) The board shall establish a medical assistance program to assist and rehabilitate
6 licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally
7 impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or
8 substance or by mental illness or chronic physical illness.

9 (b) The board shall ensure that a licensee who is required or volunteers to participate in the
10 medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed
11 to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a
12 qualified treatment program outside the state unless the board finds that there is no qualified treatment program
13 in this state.

14 (3) (a) The board shall report annually on the number and types of complaints it has received
15 involving physician practices in providing written certification, as defined in 16-12-502, for the use of marijuana
16 for a debilitating medical condition provided for in Title 16, chapter 12, part 5. The report must contain:

17 (i) the number of complaints received by the board pursuant to 37-1-308;

18 (ii) the number of complaints for which a reasonable cause determination was made pursuant to
19 37-1-307;

20 (iii) the general nature of the complaints;

21 (iv) the number of investigations conducted into physician practices in providing written
22 certification; and

23 (v) the number of physicians disciplined by the board for their practices in providing written
24 certification for the use of marijuana for a debilitating medical condition.

25 (b) Except as provided in subsection (3)(c), the report may not contain individual identifying
26 information regarding the physicians about whom the board received complaints.

27 (c) For each physician against whom the board takes disciplinary action related to the physician's
28 practices in providing written certification for the use of marijuana for a debilitating medical condition, the report

1 must include:

- 2 (i) the name of the physician;
- 3 (ii) the general results of the investigation of the physician's practices; and
- 4 (iii) the disciplinary action taken against the physician.
- 5 (d) The board shall provide the report to the economic affairs interim committee in accordance with
- 6 5-11-210 and shall make a copy of the report available on the board's website.

7 (4) The board may enter into agreements with other states for the purposes of mutual recognition
 8 of licensing standards and licensing of physicians and emergency care providers from other states under the
 9 terms of a mutual recognition agreement."

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11 **Section 3.** Section 37-3-802, MCA, is amended to read:

12 "**37-3-802. Purpose -- establishment of program.** ~~(1)~~The purposes of this part are to:

13 ~~(a)~~(1) provide primary outpatient care to low-income individuals and to individuals eligible for
 14 medicare or medicaid by retired physicians at affordable prices;

15 ~~(b)~~(2) keep the elderly or infirm in their homes longer; and

16 ~~(c)~~(3) provide home health care visits for patients who have difficulty in traveling.

17 ~~(2) The board shall adopt rules to establish the program. The rules must provide procedures for~~
 18 ~~enrolling retired physicians in the health corps and procedures under which physicians or health care facilities~~
 19 ~~may refer medicare or medicaid patients to members of the health corps."~~

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21 **Section 4.** Section 37-3-803, MCA, is amended to read:

22 "**37-3-803. Definitions.** As used in this part, unless the context requires otherwise, the following
 23 definitions apply:

24 (1) "Health care" has the meaning provided in 50-16-504.

25 (2) "Health care facility" has the meaning provided in 50-5-101.

26 (3) "Low income" means a person who is:

27 (a) eligible for the medical assistance program provided for in Title 53, chapter 6; or

28 (b) uninsured and whose family income does not exceed 200% of the federal poverty level."

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Section 5. Section 37-3-804, MCA, is amended to read:

"37-3-804. Eligibility for participation. A ~~retired~~ physician who is properly licensed and in good standing in Montana may participate in the health corps provided for in this part on:

(1) payment of a \$30 fee for a new applicant or payment of a renewal fee established by the board by rule; and

(2) providing a listing of clinical services offered by the applicant and the location where the services are offered if the services are rendered outside of a person's home. The board shall accept applications for participation in the health corps and provide written guidelines to participants in the health corps concerning the provisions of this part and rules adopted to implement this part."

Section 6. Section 37-3-805, MCA, is amended to read:

"37-3-805. Referral of patients to program -- visits Visits -- charges. ~~(1) The board shall adopt rules under which physicians or health care facilities may refer medicare or medicaid patients to the health corps program.~~

~~(2)(1)~~ (1)—A health corps member ~~shall~~ may make home visitations to eligible patients for the purpose of providing health care to eligible patients.

~~(3)(2)~~ (2) A health corps member may charge \$10 for a patient contact or visit and may submit a charge to medicare or medicaid."

Section 7. Section 37-3-806, MCA, is amended to read:

"37-3-806. Limitation on liability. (1) A physician who renders health care within the scope of the physician's license to a patient under this part and submits a payment to medicare or medicaid for the care is not liable to a patient or other person for civil damages resulting from the rendering of the care unless the damages were the result of gross negligence or willful or wanton acts or omissions by the physician.

(2) (a) A physician who renders health care within the scope of the physician's license and does not submit a claim to medicare or medicaid is immune from any cause of action associated with services provided in accordance with this part.

1 **(b)** If a patient who receives health care services from a physician who has not submitted a claim
 2 to medicare or medicaid for the care believes the physician committed gross negligence or willful or wanton
 3 acts or omissions when providing care, the person may file a complaint of unprofessional conduct with the
 4 board as provided in 37-1-308. This subsection (2)(b) does not limit a patient's ability to file a complaint of
 5 unprofessional conduct related to other aspects of the physician's services.

6 **(c)** The board shall maintain a record of any disciplinary action taken pursuant to this subsection
 7 (2).

8 **(3)** ~~Each patient must be given notice that under state law the physician may not be held legally~~
 9 ~~liable for ordinary negligence of the limitations on a physician's legal liability for services provided under the~~
 10 ~~health corps program."~~

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12 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2023.

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14 **NEW SECTION. Section 9. Applicability.** [This act] applies to health care services provided on or
 15 after July 1, 2023.

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17 **NEW SECTION. Section 10. Termination.** [Sections 1 through 7] terminate June 30, 2029.

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