

Multidisciplinary Health Care Provider Task Force

June 12, 2022



Task Force Members

Colleen White, Chair
Department of Labor &
Industry

Mary Belcher,
Commissioner of
Securities & Insurance

Paula Stannard,
Department of Health
and Human Services

Lisa Stricker, Board of
Nursing

Sam Hunthausen, Board
of Medical Examiners

Montana State Legislature
Children, Families, Health, and Human Services
Interim Committee

Rep. Stafman, Chair and Committee Members:

House Bill 495 (2021), sponsored by Rep. Mary Caferro, created a Governor-appointed Task Force to make legislative recommendations to this Committee. The bill and the Task Force terminate September 30, 2022.

The bill authorized the Department of Labor and Industry (DLI) to receive grants, gifts, and donations to fund the work of the Task Force; none were received. The DLI Business Standards Division administered the Task Force along with other agency members who attended within existing budgetary resources of their respective agencies.

Task Force Charter

The Task Force drew a narrow work charter based on bill language that expressed a very broad task, gave approximately one year to complete the task, and limited the composition of the Task Force members to four executive branch agency representatives and a representative from the Commissioner of Securities & Insurance, State Auditor's office. See, *Task Force Charter*.

As Rep. Caferro noted in testimony, HB 495ⁱ was modeled after SB 5 (2019), codified at [53-20-215, MCA](#), which directed the Department of Health and Human Services to conduct an ongoing review of its statewide community-based developmental disability programs. While the duties in SB 5 are clear given a single agency focusing on a single program, the same duties slightly altered for HB 495 became overly broad and even impossible when applied to "multidisciplinary health care providers" in Montana.

Using similar language from SB 5, HB 495 Section 1 (7) directed the Task Force to “identify definitions and areas in which the Montana Code Annotated

- (a) duplicates federal regulations;
- (b) duplicates or contradicts state statutes, rules, or policies established for health care providers by other departments;
- (c) applies inconsistently across the regions or by the state;
- (d) creates the potential for the waste of resources;
- (e) causes access issues; or
- (f) increases cost.”

Section 1 (8) continued, “[b]ased on the areas identified . . . , the task force shall review and recommend the related administrative rules, policies, and procedures to:

- (a) eliminate rules, policies, or procedures that are determined to not be cost effective; and
- (b) create consistency in the application of a rule, policy, or procedure as it applies to health care providers.”

Rather than undertake the literal tasks in the bill, and recognizing its limited authority to recommend changes in statutes, the Task Force charter drew heavily from the legislative intent established during the legislative hearingsⁱⁱ by the sponsor and proponents Montana Nurses’ Association and Montana Academy of Physician Assistants, who emphasized that the bill:

- did not expand scopes of practices but is only to “clean up” the Montana Code Annotated to recognize overlapping authority of PAs and APRNs (physician assistants and advance practice registered nurses) with physicians,
- would provide the framework to “update statute and paperwork issues,” including “DPHHS forms, health insurance forms, and other documents that require a health care provider’s signature” and avoid wasting time and resources when forms are rejected if signed by an APRN or a PA when the outdated form still states “M.D.” or “physician” signature, and
- recognizes that in rural communities, PAs and APRNs may be the sole care providers.

There were no opponents who testified against the bill.

Consistent with their testimony about the purpose of the bill, Rep. Caferro and the Montana Nurses' Association (MNA) representative referred to a list of statutes that should be considered for amendment compiled by Legislative Services Division (LSD) staff.

The Task Force used this list of statutes as the foundation for its work. See *attached*.

Opportunity for Public Comment

The draft of the tentative recommendations to amend statutes on the list was made available on the HB 495 web page in late August of 2021, along with the Task Force Charter and Task Force Work Plan. Opportunity for comment was offered at each of the Task Force meetings, held September 15, 2021, November 18, 2021, February 7, 2022, and May 12, 2022.

In September of 2021, DLI created a web page, bsd.dli.mt.gov/hb495, and an email address dedicated to the Task Force. DLI also created a portal on the web page to facilitate comments. Notices of the Task Force meetings were sent to a combined list of the interested persons lists from the agencies represented on the Task Force: DPHHS, CSI, BSD, Board of Medical Examiners (BOME) (having jurisdiction over physicians and physician assistants), and Board of Nursing (BON) (having jurisdiction over advance practice registered nurses). In addition to being sent meeting notices, stakeholder agencies and local government organizations were also sent special correspondence that directed the agency to line items on the list of statutes identified under their jurisdiction.

Additionally, the Task Force certified a Notice of Public Opportunity for Hearing and Written Comment on the list of statutes with the Secretary of State on March 1, 2022, held a hearing on April 15, 2022, and offered opportunity for formal comment through April 29, 2022.

During the formal official comment period, the Board of Medical Examiners and the Board of Nursing reviewed, at their respective publicly noticed meetings, the list of statutes and recommendations regarding the list, and submitted comment.

The primary interested parties, given the focus on the overlapping scopes of practices of physicians, physician assistants, and advance practice registered nurses, were the boards and private associations related to nurses and physicians. The comments received during the formal process are individually attached and summarized. See, *Summary of Comments & Report to Task Force, May 10, 2022*. Additional comments received are included on the list of statutes in the last column to the right.

Over the course of informal and formal opportunity for comment, the Task Force received no comments to add any specific statutes to the list.

List of Statutes and Recommendations

The featured product of the Task Force is “a list of affected statutes requiring amendment . . .” HB 495 Sec. 1 (10)(b). See, *List of Statutes*.

The list makes recommendations on 163ⁱⁱⁱ separate Montana Code Annotated sections, color-coded on the far left of the list as follows:

Green	Amend	95 sections
Blue	Defer to TRS and MPERA to review and amend	10 sections
Yellow	Do not amend	3 sections
Gray	Excluded from task force consideration	55 sections

Statutes color-coded gray and excluded from consideration include the Montana Abortion Control Act due to pending litigation and Medical Marijuana Title 16, chapter 12, part 5 effective January 1, 2022, because of the recent legislative consideration of those provisions.

Other statutes also *were excluded* from a recommendation to amend, in general if they met one or more of the following criteria:

- lacked connection to a form and signature issue,
- did not involve diagnosis or treatment,
- did not involve rural settings or access to care,
- involved a high acuity patient setting,
- did not reasonably fit into the “clean up” category,
- involved a policy decision by an agency,
- involved a federal statutory definition of physician that excluded other providers,
- involved a definition of physician that already included APRN and physician assistant,
- involved an agency that did not respond to the Task Force outreach, or
- was repealed or amended in the 2021 Legislature after the list of statutes was produced by Legislative Services Division staff and no changes were necessary.

Inversely, statutes color-coded green *were included* in the recommendation to amend, in general if they involved the issues raised by the sponsor and proponents, e.g., a form and signature based on diagnosis or treatment, potential rural and access to care issues, lower acuity patient settings, or were ripe for “clean up.”

The blue color-coded statutes were left to be addressed by the Teachers’ Retirement System and the Montana Public Employee Retirement Administration at those agencies’ request.

Lastly in reference to the yellow color-coded statutes, the Task Force debated whether to amend three statutes addressing certification of incapacity by a court-appointed physician. See, rows #153 – 155. The Task Force initially recommended amendment to include PA

and APRN based on clearly overlapping scopes of practice of a physician but noted that that the sole identification of a physician in this statute may be a policy decision. The Task Force continues to assert that there is a clear overlapping scope of practice to determine mental or physical incapacity for the purposes of court appointment of a guardian. However, the Task Force agreed to retract the recommendation to amend based on public comment that the amendment exceeded the Task Force's scope and the fact that no agency was identified to elicit feedback.

The interim committee is invited to reach a different conclusion about whether to amend the statutes in these rows and move them to "green" status.

Scope of Practice

During Task Force deliberations, the question arose whether it was necessary to insert the term "qualified" or otherwise describe the required skill or training to perform the various examinations, diagnoses, and treatments raised by the statutes under review. The Task Force members agreed that the terms "physician" and "physician assistant" and "advance practice registered nurse" as they are defined in the practice acts of Title 37, chapters 3 and 8 sufficiently incorporate the professional obligations to only perform within the individual's education, training, and experience. In the case of physician assistants, this includes a delegation agreement between the physician assistant and the supervising physician. Advance practice registered nurses may practice independently, but again, only within the individual's education, training, and experience. The same is true for physicians. See attached, *Scope of Practices for PA and APRN*.

Outreach to Agencies on Forms

Given the concern expressed about outdated forms during legislative testimony on HB 495, the Task Force sent correspondence directing state agencies to review their forms and respond to the Task Force. As a result, five agencies responded and identified 40 forms that were subject to updating and revision to recognize the authority of other providers in addition to physicians to sign.

Conclusion

Despite comments urging the Task Force to undertake a broader reform outside of the three health care provider types,^{iv} the Task Force nevertheless identified 10 sections of law to repeal, 84 to amend, and facilitated the updating of 40 forms consistent with the needs expressed by the sponsor and proponent in testimony during consideration of HB 495.

As noted in this report and below, the list of statutes and other pertinent documents of the Task Force are attached. Agendas and recorded minutes of the Task Force are available at <https://bsd.dli.mt.gov/hb495>.

The Task Force appreciates the assistance of the Governor's office, legislators, legislative staff, executive agencies, local governmental organizations, and professional associations who aided and commented during this process.

Sincerely,



Colleen White, Chair
Multidisciplinary Health Care Provider Task Force

Attached:

List of Statutes and Recommendations

Task Force Charter

Task Force Written Plan

Form Solicitation Summary

Hearing Notice

Comment Summary & Report

Written Comments

Transcript of Comments

Scope of Practice of Advance Practice Registered Nurse

Scope of Practice of Physician Assistant

ⁱ HB 495, Ch. 524 L. 2021, apparently has not been codified in the Montana Code Annotated.

ⁱⁱ See, Mont. House Human Services Comm., Hearing on HB 495 (February 24, 2021), Mont. Senate Public Health, Welfare, and Safety Comm., Hearing on HB 495 (March 26, 2021).

ⁱⁱⁱ The last row on the list indicating a total of 158 rows should include four additional rows, e.g., 1.b., 7.b., etc. and on row 64, two statutes are considered for amendment, for a total of 163 separate statutes considered.

^{iv} The membership potentially necessary to address the broad language of the bill may have included representatives of all health care provider types that offer services in the collaborative care model, health care consumers of different ages and socio-economic status, rural and urban health care facility administrators, health care lawyers, private and public health insurers, and governmental policy makers.