

## HOUSE BILL NO. 400

INTRODUCED BY T. MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PHYSICIAN ASSISTANTS; PROVIDING FOR COLLABORATIVE AGREEMENTS FOR PHYSICIAN ASSISTANTS; REPLACING SUPERVISION AGREEMENTS FOR PHYSICIAN ASSISTANTS WITH COLLABORATIVE AGREEMENTS; CLARIFYING COVERAGE OF PHYSICIAN ASSISTANTS UNDER HEALTHY MONTANA KIDS, HEALTH MAINTENANCE ORGANIZATIONS, AND MULTIPLE WELFARE EMPLOYER ARRANGEMENTS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 33-31-111, 33-35-306, 37-20-101, 37-20-104, 37-20-301, 37-20-401, 37-20-403, 37-20-404, 37-20-405, 37-20-410, 37-20-411, AND 53-4-1005, MCA."

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

**Section 1.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary

1 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.

2 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701  
3 through 33-3-704.

4 (6) This section does not exempt a health maintenance organization from:

5 (a) prohibitions against interference with certain communications as provided under Title 33, chapter  
6 1, part 8;

7 (b) the provisions of Title 33, chapter 22, parts 7 and 19;

8 (c) the requirements of 33-22-134 and 33-22-135;

9 (d) network adequacy and quality assurance requirements provided under chapter 36; or

10 (e) the requirements of Title 33, chapter 18, part 9.

11 (7) Title 33, chapter 1, parts 6, 12, and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2,  
12 parts 13, 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, Title 33, chapter 10, Title 33,  
13 chapter 12, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-114, 33-22-129, 33-22-131,  
14 33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through  
15 33-22-159, 33-22-180, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-  
16 524, 33-22-526, and Title 33, chapter 32, apply to health maintenance organizations."

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18 **Section 2.** Section 33-35-306, MCA, is amended to read:

19 **"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-  
20 funded multiple employer welfare arrangements are subject to the following provisions:

21 (a) 33-1-111;

22 (b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare  
23 arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

24 (c) Title 33, chapter 1, part 7;

25 (d) Title 33, chapter 2, part 23;

26 (e) 33-3-308;

27 (f) Title 33, chapter 7;

28 (g) Title 33, chapter 18, except 33-18-242;

(h) Title 33, chapter 19;

(i) 33-22-107, ~~33-22-114~~, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153; and

(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 3.** Section 37-20-101, MCA, is amended to read:

**"37-20-101. Qualifications of supervising physician and physician assistant.** ~~(1) The supervising physician named in the supervision agreement required by 37-20-301 shall:~~

~~(a) possess a current, active license to practice medicine in this state; and~~

~~(b) exercise supervision over the physician assistant in accordance with the rules adopted by the board and retain professional and legal responsibility for the care and treatment of patients by the physician assistant.~~

~~(2) A physician assistant named in the supervision agreement required by 37-20-301 must have a current, active Montana physician assistant license."~~

**Section 4.** Section 37-20-104, MCA, is amended to read:

**"37-20-104. Unlicensed practice -- penalties.** (1) A person who employs a physician assistant or holds out to the public that the person is a physician assistant without having been issued a Montana physician assistant license is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license ~~and submitting a supervision agreement to the board~~, a physician assistant may not practice as a physician assistant in this state, ~~even under the supervision of a licensed physician.~~

(3) The board may enforce the provisions of this section by the remedy of injunction and the application of other penalties as provided by law."

Section 5. Section 37-20-301, MCA, is amended to read:

**"37-20-301. Requirements for ~~use of physician assistant practice--supervision agreement--~~  
~~duties and delegation agreement--content--approval--filing.~~** (1) A physician, office, firm, state institution,  
or professional service corporation may not employ or make use of the services of a physician assistant in the  
practice of medicine, as defined in 37-3-102, and as provided in this chapter and a physician assistant may not  
be employed or practice as a physician assistant unless the physician assistant:

~~(a) is supervised by a physician licensed in this state;~~

~~(b)(a)~~ is licensed by the board;

~~(c) has submitted a physician assistant supervision agreement to the board on a form prescribed by  
the department; and~~

~~(d)(b)~~ has paid to the board the applicable fees required by the board; and

(c) has executed a collaborative agreement, unless the physician assistant has active and valid  
credentials and privileges at a hospital or critical access hospital as both terms are defined in 50-5-101.

~~(2) A supervising physician and the supervised physician assistant shall execute a duties and  
delegation agreement constituting a contract that defines the physician assistant's professional relationship with  
the supervising physician and the limitations on the physician assistant's practice under the supervision of the  
supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes  
in the duties of each party occurring over time. The board may by rule specify other requirements for the  
agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and  
delegation agreement with a supervising physician by October 1, 2006. (a) For the purposes of this chapter, a  
collaborative agreement is a mutually agreed on plan for the overall working relationship and collaborative  
arrangement between a physician assistant and one or more physicians licensed in this state that designates  
the scope of services that the physician assistant may provide to manage the care of patients.~~

(b) The physician assistant and at least one of the collaborating physicians must have appropriate  
experience or training in providing care to patients with the same or similar medical conditions.

(c) Collaborating physicians are not required to be physically present while the physician assistant is  
providing patient care provided that a collaborating physician is or can be easily in contact with the physician  
assistant by electronic or other means of communication to collaborate, consult, and refer as needed.

(3) ~~A physician assistant and the physician assistant's supervising physician shall keep the supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon request to a health care provider, a health care facility, a state or federal agency, the board, and any other individual who requests one. The collaborative agreement must be maintained on file at the place of practice of the physician assistant, and a copy must be provided to the board.~~

**Section 6.** Section 37-20-401, MCA, is amended to read:

**"37-20-401. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

(2) ~~"Duties and delegation agreement" means a written contract between the supervising physician and the physician assistant that meets the requirements of 37-20-301.~~ "Collaborating physician" means a physician licensed by the board to practice medicine pursuant to 37-3-305 who oversees the performance, practice, and activities of a physician assistant under a collaborative agreement as defined in 37-20-301(2).

(3) "Collaborative agreement" means a written agreement among a physician or physicians and a physician assistant that meets the requirements of 37-20-301. For the purposes of Title 50, chapter 20, only, a collaborative agreement is equivalent to a supervision agreement.

~~(3)(4)~~ (4) "Physician assistant" means a member of a health care team, licensed by the board, who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment ~~under the supervision of~~ in collaboration with a physician or physicians licensed by the board.

(4) ~~"Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board who agrees to a supervision agreement and a duties and delegation agreement.~~

(5) ~~"Supervision agreement" means a written agreement between a supervising physician and a physician assistant providing for the supervision of the physician assistant."~~

**Section 7.** Section 37-20-403, MCA, is amended to read:

**"37-20-403. Physician assistant as agent of supervising physician -- degree of supervision required -- scope of practice.** (1) ~~A physician assistant is considered the agent of the supervising physician~~

1 ~~with regard to all duties delegated to the physician assistant and is professionally and legally responsible for the~~  
2 ~~care and treatment of a patient by a physician assistant licensed in accordance with this chapter. A health care~~  
3 ~~provider shall consider the instructions of a physician assistant as being the instructions of the supervising a~~  
4 ~~collaborating physician as long as the instructions concern the duties delegated to the physician assistant~~  
5 designated scope of services the physician assistant may provide.

6 ~~(2) Onsite or direct supervision of a physician assistant by a supervising physician is not required if~~  
7 ~~the supervising physician has provided a means of communication between the supervising physician and the~~  
8 ~~physician assistant or an alternate means of supervision in the event of the supervising physician's absence.~~

9 ~~(3)(2) A physician assistant may~~ Within the scope of services the physician assistant may provide, a  
10 physician assistant may:

11 (a) diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either  
12 physical or mental, by any means, method, device, or instrumentality; authorized by the supervising physician.

13 (b) obtain informed consent;

14 (c) supervise, delegate, and assign therapeutic and diagnostic measures;

15 (d) certify the health or disability of a patient as required by any local, state, or federal program; and

16 (e) authenticate any document that a physician may authenticate."

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18 **Section 8.** Section 37-20-404, MCA, is amended to read:

19 **"37-20-404. Prescribing and dispensing authority --~~discretion of supervising physician on~~**  
20 **~~limitation of authority.~~** (1) A physician assistant may prescribe, dispense, and administer drugs ~~to the extent~~  
21 authorized by the supervising physician in accordance with the collaborative agreement or active and valid  
22 credentials and privileges at a hospital or critical access hospital as both terms are defined in 50-5-101.

23 (2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging  
24 and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

25 (3) The prescribing and dispensing authority ~~granted for~~ a physician assistant may include the  
26 following:

27 (a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV  
28 drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant shall maintain registration with the federal drug enforcement administration if the physician assistant is authorized ~~by the supervising physician~~ to prescribe controlled substances.

(e) A prescription written by a physician assistant must comply with regulations relating to prescription requirements adopted by the board of pharmacy."

**Section 9.** Section 37-20-405, MCA, is amended to read:

**"37-20-405. Billing.** ~~A supervising physician~~ physician assistant, medical office, firm, institution, or other entity may bill for a service provided by a ~~supervised~~ physician assistant."

**Section 10.** Section 37-20-410, MCA, is amended to read:

**"37-20-410. Participation in disaster and emergency care -- liability of physician assistant and ~~supervising physician.~~** (1) A physician assistant licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal employer who provides medical care in response to an emergency or a federal, state, or local disaster may provide that care ~~either without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this subsection is limited to the~~ beyond the scope of services designated in a collaborative agreement or active and valid credentials and privileges at a hospital or critical access hospital, as both terms are defined in 50-5-101, for the duration of the emergency or disaster.

(2) A physician who ~~supervises a~~ collaborates with a physician assistant providing medical care in response to an emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter applicable to ~~supervising physicians~~ who are party to collaborative agreements.

(3) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency medical care during an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is

provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services are normally provided.

(4) A physician who ~~supervises~~ collaborates with a physician assistant voluntarily and gratuitously providing emergency care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in ~~supervising~~ collaboration with the physician assistant if the injury is caused by simple or ordinary negligence on the part of the physician assistant providing the care or on the part of the ~~supervising~~ collaborating physician."

**Section 11.** Section 37-20-411, MCA, is amended to read:

**"37-20-411. Unlawful acts.** A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) ~~—~~ has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; ~~or~~

(2) ~~— has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement."~~

**Section 12.** Section 53-4-1005, MCA, is amended to read:

**"53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

- (a) inpatient and outpatient hospital services;
- (b) physician, physician assistant, and advanced practice registered nurse services;
- (c) laboratory and x-ray services;
- (d) well-child and well-baby services;
- (e) immunizations;
- (f) clinic services;
- (g) dental services;
- (h) prescription drugs;
- (i) mental health and substance abuse treatment services;

1 (j) habilitative services as defined in 53-4-1103;

2 (k) hearing and vision exams; and

3 (l) eyeglasses.

4 (2) The program must comply with the provisions of 33-22-153.

5 (3) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover  
6 significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not  
7 exceed \$100,000 in state funds, plus any matched federal funds, each fiscal year.

8 (4) The department is specifically prohibited from providing payment for birth control contraceptives  
9 under this program.

10 (5) The department shall notify enrollees of any restrictions on access to health care providers, of any  
11 restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state  
12 provider to be an eligible provider. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 3,  
13 Ch. 169, L. 2007; sec. 10, Ch. 97, L. 2013; sec. 5, Ch. 399, L. 2017.)"

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