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As of: July 22, 2008 (11:48am)

LC0038--revised 7/22

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising language related to economic credentialing of physicians and conflicts of interest among health care providers; requiring health care providers' disclosure of investment interests and employment relationships; clarifying primary responsibility of health care providers and health care facilities; prohibiting certain kickbacks; defining conflict of interest for health care providers; including conflict of interest as unprofessional conduct for health care providers; requiring licensing boards to share investigation reports with the department of public health and human services; expanding economic credentialing from hospitals to outpatient centers for surgical services; clarifying conflict of interest terms; revising enforcement terms; removing a termination date for economic credentialing; amending sections 37-1-135, 37-1-302, 37-1-316, 37-1-410, 50-5-105, 50-5-117, and 50-5-207, MCA; repealing Section 6, Chapter 351, Laws of 2007; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Patient information -- disclosure -- referrals.** (1) It is public policy for the state of Montana that a patient receive from health care providers information

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that allows the patient or client to make informed decisions not only relating to their medical conditions but also to the financial or quality aspects of their health care decisions.

(2) (a) Except as provided in subsection (3), a health care provider who makes referrals and who has an investment, employment, or contractual interest related to that referral shall disclose the investment, employment, or contractual interest in writing of 100 words or less to an existing or prospective patient or client.

(b) The disclosure required in subsection (2) (a) :

(i) must be in at least 10 point type and on a separate piece of paper from the general paperwork received by a patient or a client at the initiation of a visit;

(ii) must be posted in a conspicuous place in the office or facility;

(iii) must be provided at the initiation of a visit or, preferably, at the time of the referral; and

(iv) may request a patient's or a client's signature.

(c) This subsection (2) does not prohibit a health care provider from recommending a preferred health care provider when making a referral.

(3) Subsection (2) does not apply to a patient receiving emergency care or to a patient admitted as an inpatient of a hospital, a critical access hospital, or an outpatient center for surgical services, except that prior to the discharge of an inpatient who needs home health care or skilled nursing that patient must be given appropriate referral information, as

required under 42 CFR 482.43.

(4) The disclosure required in subsection (2) may be similar to the following statement:

During the course of your relationship with this health care provider, you may be referred to another health care provider or health care facility with which your referring health care provider has an investment, employment, or contractual interest. Your referring health care provider has an (investment, employment, contractual) relationship with _____ (facility or health care provider) and an (investment, employment, contractual) relationship with _____ (facility or health care provider).

You, as a patient or client, have freedom to choose among health care providers and health care facilities.

(5) For the purposes of [sections 2 and 3 and this section], the following definitions apply:

(a) "Diagnostic services" mean magnetic resonance imaging, nuclear medicine, angiography, arteriography, computed tomography, positron emission tomography, digital vascular imaging, bronchography, lymphangiography, splenography, ultrasound, electroencephalography, electrocardiography, nerve conduction studies, and evoked potentials.

(b) "Health care provider" is a person licensed under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36,

or a provider of diagnostic services who receives a medicare or medicaid payment under Titles XVIII or XIX of the Social Security Act, respectively.

(c) "Referral" is a written or oral order from a health care provider to a patient or client for health care services outside of a routine office exam, including:

(i) the forwarding of a patient or a client to another health care provider with the same or a different license, to a diagnostic facility that receives medicare or medicaid payments under Titles XVIII or XIX of the Social Security Act, respectively, or to a health care facility licensed under Title 50 or operated by a health care provider licensed under this title; or

(ii) a request or establishment of a plan of care that includes the provision of prescribed health services or prescribed health care supplies.

NEW SECTION. Section 2. Primary responsibility. In addition to any specific policy referenced in chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36, it is the public policy adopted by the legislature that a health care provider's primary responsibility is the welfare of a patient or a client in all situations except those in which the primary responsibility is to public health.

NEW SECTION. Section 3. Kickbacks prohibited -- limited exceptions. (1) Except as provided in subsection (2), an

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employment contract, employment agreement, or contract-for-hire agreement with a health care provider, signed or renewed after [the effective date of this act], may not:

(a) require exclusive referrals or an expected volume of referrals between parties; or

(b) base remuneration or rebates on exclusive referrals or an expected volume of referrals.

(2) Exceptions to the remuneration or rebate provisions of subsection (1)(b) include:

(a) written contracts or agreements entered into after an open-bidding process;

(b) community-based fair market value payments to a health care provider, including bonuses that do not relate to a specific volume or percentage of business based on referrals, to the extent allowed under the antikickback statute, 42 U.S.C. 1320a-7b by:

(i) an employer, including a health care facility as defined in 50-5-101; or

(ii) a group practice of two or more health care providers that has filed as a partnership, professional corporation, or limited liability company under Title 35 and that jointly:

(A) uses office space, facilities, equipment, and personnel;

(B) bills in the name of the group practice; and

(C) treats receipts for services as receipts of the group practice;

(c) amounts paid by a vendor to a purchasing agent for a health care provider or health care facility, defined under 50-5-

101, under a written purchasing agreement or contract that specifies a fixed amount or a fixed percentage as provided in 42 U.S.C. 1320a-7b(b) (3) (C) ;

(d) waivers, reductions, or amounts paid as provided under 42 U.S.C. 1320a-7b(b) (3) (D through H) and involving a federally qualified health care center, managed care organization, health maintenance organization, pharmacy, rural health clinic, a health care provider participating in a risk-sharing agreement, or other individual or entity covered by 42 U.S.C. 1320a-7b(b) (3) (D through H) ; and

(e) written fair market value remuneration or compensation agreements involving health care facilities and health care providers that qualify for exceptions under 42 U.S.C. 1395nn(e) (1) through (8) .

NEW SECTION. **Section 4. Primary responsibility.** The primary concern of any licensee under this title must be the welfare of the patient except when public health takes precedence over the well-being of an individual.

NEW SECTION. **Section 5. Enforcement -- confidentiality -- definitions.** (1) (a) Upon receiving notification of a determination of unprofessional conduct by a Title 37 health care licensing board under 37-1-316(19) or Title 37 program under 37-1-410, the department shall investigate to determine if the health care provider subject to the unprofessional conduct determination had an employment contract, employment agreement,

or contract-for-hire arrangement with a health care facility licensed under this title that violated [section 3].

(b) If the department determines that the employment contract, employment agreement, or contract-for-hire arrangement violates [section 3], the provisions of parts 1 and 2 of this chapter apply.

(2) Until the department makes a determination as provided under subsection (1)(b), the department shall maintain the confidentiality of investigation records obtained from a health care licensing board and from its own investigation. The portions of an employment contract or agreement that violate state law do not have protection under privacy statutes.

(4) For the purposes of this section, "health care provider" means an individual licensed or certified under Title 37, chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36.

Section 6. Section 37-1-135, MCA, is amended to read:

"37-1-135. Licensing investigation and review -- record access -- record sharing. (1) Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

(2) Notwithstanding other confidentiality requirements, a

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board or, for a program, the department shall report its findings that a licensee under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36, has engaged in unprofessional conduct under 37-1-316(19) or 37-1-410(1)(m) and shall provide any related investigation reports and records to the department of public health and human services for investigation as provided under [section 5]."

{Internal References to 37-1-135: None.}

Section 7. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. (1) As used in this part, the following definitions apply:

~~(1)~~(a) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

~~(2)~~(b) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

~~(3)~~(c) "Department" means the department of labor and industry.

~~(4)~~(d) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

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~~(5)~~(e) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

~~(a)~~(i) whether a person has violated a provision of law justifying discipline against the person;

~~(b)~~(ii) the status of compliance with a stipulation or order of the board;

~~(c)~~(iii) whether a license should be granted, denied, or conditionally issued; or

~~(d)~~(iv) whether a board should seek an injunction.

~~(6)~~(7) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

~~(7)~~(f) "Profession" or "occupation" means a profession or occupation regulated by a board.

(2) For the purposes of this part and 37-1-410, the term "conflict of interest" refers to a recurring set of conditions in which a health care provider exercises professional judgment concerning a patient's welfare when making a referral that is unduly influenced directly or indirectly by an investment, employment, or contractual interest that is the beneficiary of a referral."

{*Internal References to 37-1-302:*
37-1-138 x 37-35-301*x}

Section 8. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official

to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

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(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted

standards.

(19) for health care practitioners licensed under chapters 3 and 4, 6 through 17, 20 through 28, and 34 through 36 a determination of a conflict of interest or violation of [section 3]."

{Internal References to 37-1-316:

37-1-319 x	37-1-320 x	37-3-348 x	37-35-301*x
37-35-301*x	37-35-301x	50-20-307x}	

Section 9. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this chapter:

(a) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(b) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(c) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading

statement;

(e) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(g) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(h) failing to comply with a term, condition, or limitation of a license by final order of the department;

(i) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(j) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(k) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or

harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(1) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(m) engaging in a conflict of interest, as defined in 37-1-302, or a violation of [section 3].

(2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:

(a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;

(b) use of alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(c) conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

{Internal References to 37-1-410:
37-3-104x 37-35-103x}

Section 10. Section 50-5-105, MCA, is amended to read:

"50-5-105. ~~(Temporary)~~ Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6. ~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-105. (Effective July 1, 2009) Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.~~

~~(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~(b) For the purposes of this subsection (2), the following definitions apply:~~

~~(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~(3) A person who operates a facility may not discriminate~~

~~among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

~~(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.~~

~~(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

{ Internal References to 50-5-105: None. }

Section 11. Section 50-5-117, MCA, is amended to read:

"50-5-117. (Temporary) Economic credentialing of physicians prohibited -- definitions. (1) Except to the extent necessary to determine physician competency or to comply with medicare or medicaid certification under Titles XVIII and XIX of the Social Security Act, respectively, or for accreditation by the joint commission on accreditation of healthcare organizations or the accreditation association for ambulatory health care, a hospital or outpatient center for surgical services may not engage in economic credentialing by:

(a) ~~except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations,~~ requiring a physician requesting medical staff membership or medical staff privileges to agree to

make referrals to that hospital, outpatient center for surgical services, or to any facility related to the hospital or outpatient center for surgical services;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan or outpatient center for surgical services health plan to a physician ~~or a partner, associate, or employee of the physician~~ who has medical staff privileges because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital or outpatient center for surgical services may:

(a) refuse to appoint a physician to the ~~governing body of the hospital~~ board or to the position of president of the medical staff or presiding officer of a medical staff committee if a

conflict of interest exists or the physician or a partner or employee of the physician provides medical or health care services at, ~~has an ownership interest in,~~ or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(b) require recusal of a physician member of the board, the president of the medical staff of the hospital or outpatient center for surgical services, or presiding officer of a medical staff committee from financial decisions and information related to the hospital or outpatient center for surgical services if the physician member of the board, president of the hospital medical staff or outpatient center for surgical services staff, or presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.

(3) For the purposes of this section, the following definitions apply:

(a) "Board" means the governing body or board of directors of a hospital or outpatient center for surgical services.

(b) (i) "Conflict of interest" means, notwithstanding the board's own conflict of interest policy, a situation in which a physician in a leadership position either individually or through an immediate family member as defined in 15-30-602, partner, or employee of the physician has a financial interest in any health care facility that may compromise the board's fiduciary responsibility.

(ii) For the purposes of subsection (3) (b) (i), a financial interest exists if a person directly or indirectly holds through

business or investment a greater than 5% ownership interest in any health care facility licensed under chapter 5, that offers similar services as a hospital licensed under chapter 5.

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

(ii) This term does not mean use by the hospital or outpatient center for surgical services of:

(i)(A) exclusive contracts with physicians, if the contracts do not violate the unfair trade practices act under Title 30, chapter 14, part 2;

(ii)(B) equitable medical staff on-call requirements; as determined by a super majority of the medical staff of the hospital or outpatient center for surgical services. The on-call requirements may not violate 30-14-103.

(iii)(C) adherence to a formulary approved by the medical staff; or

(iv)(D) other medical staff policy adopted to manage health care costs or improve quality.

(b)(d) "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

(c)(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members,

insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~(f) "Physician" has the meaning provided in 37-3-102.

~~(4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)"~~

{Internal References to 50-5-117: None.}

Section 12. Section 50-5-207, MCA, is amended to read:

"50-5-207. ~~(Temporary)~~ Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

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(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except 50-5-117, is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license -- provisional~~

~~license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances~~

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exist:

~~—— (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~—— (b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~—— (c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~—— (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~—— (e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~—— (f) There is misappropriation of the property or funds of a patient or resident.~~

~~—— (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~—— (h) Any provision of parts 1 through 3 is violated.~~

~~—— (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~—— (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need~~

~~requirements of part 3.~~

~~(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."~~

{Internal References to 50-5-207: None.}

NEW SECTION. **Section 13. Repealer.** Section 6, Chapter 351, Laws of 2007, is repealed.

NEW SECTION. **Section 14. {standard} Codification instruction.** (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 50, chapter 4, part 1, and the provisions of Title 50, chapter 4, part 1, apply to [section 4].

(3) [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [section 5].

NEW SECTION. **Section 15. {standard} Effective date.** [This act] is effective on passage and approval.

- END -

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