

**** 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; regulating certain contracts among health care providers; removing a termination date for economic credentialing; amending sections 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. Conflict of interest -- contracts -- referrals -- hospital privileges -- definition. (1) Any health care provider that has a conflict of interest based on an investment interest or an employment interest shall notify the patient about the conflict of interest and provide the patient with written information as provided under subsection (4). The primary concern must be the welfare of the patient. A health care provider may not engage in a conflict of interest that is detrimental to a patient's health.

(2) (a) Although a conflict of interest may develop, a health care provider is free to enter lawful contractual relationships, including the acquisition of ownership interests in health facilities, products, or equipment.

(b) A contractual relationship may not require referrals or an expected volume of referrals between the parties to the contract and may not specify that referrals are a basis for remaining an investor or an employee.

(3) A hospital may not use scheduling of its facilities or requirements for on-call duty to punish an independent health care provider for a conflict of interest unless a conflict of interest is proved to exist as provided in subsection (5).

(4) A health care provider who, through an investment interest or employment interest, makes referrals to a health care facility in which that health care provider has an investment interest or employment interest shall:

(a) provide written notification of under 100 words disclosing the investment or employment interest to the patient when making a referral;

(b) provide a list of alternative, effective, and licensed facilities or health care providers if they are available;

(c) inform the patient that the patient has freedom to choose the health care provider or facility to obtain services; and

(d) assure the patient that the referring health care provider will not treat the patient differently depending on the patient's choice of health care provider or facility.

(5) A conflict of interest may be considered detrimental to a patient if a health care provider has an investment interest of more than 5% in a health care facility licensed under Title 50 and has a referral pattern that demonstrates consistent referrals

based on a patient's health insurance coverage or ability to pay.

(6) A hospital that determines that a conflict of interest exists, as described in subsection (5), may refuse to appoint a health care provider as a voting member of the governing body of the hospital.

(7) (a) (i) A hospital that contends a conflict of interest exists, as provided in subsection (5), may revoke or deny renewal of privileges of a physician on that basis only if an arbitrator, appointed as provided in 27-5-211 or jointly chosen by the hospital and the physician accused of a conflict of interest, determines that a conflict of interest exists, as provided in subsection (5).

(ii) The cost of arbitration must be shared equally by the hospital and the physician.

(b) In addition to the requirement in subsection (7)(a), a hospital may not deny privileges on the basis of a conflict of interest without due process of law.

(c) The provisions of 50-5-117 do not apply to this subsection (7).

(8) (a) For the purposes of this section, a "health care provider" means an individual licensed, certified, or otherwise authorized under Title 37 to provide health care in the ordinary course of business or practice of a profession.

(b) The term does not include an individual licensed under Title 37, chapter 18.

Section 2. 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) (a) 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~~

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~~applicant is licensed under Title 37, chapter 6 only on the basis of education, training, or competency as determined by the hospital's medical staff.~~

~~(b) (i) A hospital that employs its medical staff may not discriminate, as provided in subsection (1), but may set criteria in addition to education, training, or competency.~~

~~(ii) Employment contracts may not provide direct or indirect remuneration, including kickbacks or rebates, in cash or in kind to induce referrals.~~

~~(iii) A health care facility or a health care provider, as defined in [section 1], who is billing for an employee licensed under Title 37 may bill only at that employee's level of licensure. (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 3. Section 50-5-117, MCA, is amended to read:

"50-5-117. ~~(Temporary) Economic credentialing of discrimination against physicians prohibited -- definitions.~~ (1)

A hospital may not engage in economic credentialing discrimination 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 or to any facility related to the hospital;

(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 to a physician or a partner, associate, or employee of the physician 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 may refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if 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.~~

~~(3)(2)~~ For the purposes of this section, the following definitions apply:

(a) ~~(i)~~ "Economic ~~credentialing~~ discrimination" 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 training, current competence, experience, ability, personal character, and judgment.

~~(ii)~~ This Except as provided in subsection (3), this term does not mean use by the hospital of:

- ~~(i)~~(A) exclusive contracts with physicians;
- ~~(ii)~~(B) medical staff on-call requirements;
- ~~(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) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.

(c) "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) "Physician" has the meaning provided in 37-3-102.

(3) An exclusive contract between a hospital and a health care provider licensed under Title 37 may not be used to punitively exclude another health care provider because the excluded health care provider has established a competing health care service or facility.

(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 4. 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.

(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 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 5. Repealer. Section 6, Chapter 351, Laws of 2007, is repealed.

NEW SECTION. Section 6. {standard} Codification instruction. [Section 1] 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 1].

NEW SECTION. Section 7. {standard} Effective date. [This act] is effective on passage and approval.

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