

Unofficial Draft Copy

As of: August 12, 2010 (2:11pm)

LCmihp

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws related to medical assistance impairment programs; requiring periodic audits of the programs; applying confidentiality provisions to all programs; requiring board action on certain program violations; requiring assistance programs for the board of medical examiners and the board of pharmacy; amending sections 37-1-131, 37-3-203, 37-3-401, and 37-7-201, MCA; and repealing section 37-3-208, MCA."

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

NEW SECTION. **Section 1. Assistance program audits.** In each 10-year period, the assistance programs provided for in chapters 3, 4, 7, and 8 must be audited for performance objectives as determined by each licensing board in chapters 3, 4, 7, and 8 at least twice, as provided in subsections (1) and (2).

(1) Licensing boards in chapters 3, 4, 7, and 8 shall each contract and pay for an external audit of the relevant assistance program once every five years. The department shall budget the costs against each licensing board in chapters 3, 4, 7, and 8 for the external audit over a corresponding period.

(2) The department shall arrange for an internal audit midway through the subsequent 5-year period and shall charge the

licensing boards in chapters 3, 4, 7, and 8 for the internal audit, budgeting over the corresponding period.

NEW SECTION. **Section 2. Confidentiality of medical impairment assistance information.** (1) The proceedings and records of a medical impairment assistance program, created pursuant to 37-3-203(2), 37-4-311, [section 6], and 37-8-202(1)(i), relating to a licensee who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except that the proceedings and records of the program as they pertain to a licensee under chapters 3, 4, 7, or 8 are subject to discovery or introduction into evidence in a disciplinary proceeding against the licensee before the applicable licensing board.

(2) Proceedings and records of the program created pursuant to 37-3-203(2), 37-4-311, [section 6], and 37-8-202(1)(i) do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a licensee under chapters 3, 4, 7, or 8 who is receiving or has received assistance from the program. Health care information is subject to discovery from the licensee or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 3. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in an assistance program under chapters 3, 4, 7, and 8 if the person within a 3-year period has three separate occurrences in which they have returned to use of a prohibited or proscribed substance;

~~(d)~~(e) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(e)~~(f) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation

authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or

continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

{ *Internal References to 37-1-131:*
37-48-106x }

Section 4. Section 37-3-203, MCA, is amended to read:

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

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

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

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the

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prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

~~(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;~~

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

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

~~(2) If the board establishes a program pursuant to subsection (1)(d), the~~ (a) The board shall establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness.

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

in this state."

{ Internal References to 37-3-203:

37-3-201 x

37-3-208 r

37-3-208r

37-3-401a

87-2-803x}

Section 5. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under ~~37-3-203(1)(d)~~ 37-3-203(2), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

{*Internal References to 37-3-401:*
37-3-404 x 37-3-405x}

Section 6. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization -- powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in

this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or

otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

(f) issuing certificates of "certified pharmacy" under this chapter;

(g) establishing and collecting license and registration fees;

(h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall

outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.

(i) establishing a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state.

(j) making rules for the conduct of its business;

~~(j)~~(k) performing other duties and exercising other powers as this chapter requires;

~~(k)~~(l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."

{*Internal References to 37-7-201: None.*}

NEW SECTION. Section 7. {standard} Repealer. The following section of the Montana Code Annotated is repealed:

37-3-208. Confidentiality of information -- physician assistance program.

{*Internal References to 37-3-208: None.*}

NEW SECTION. Section 8. {standard} Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 2, part 2, and the provisions of Title 37, chapter 2, part 2, apply to [section 2].