

Unofficial Draft Copy

As of: February 8, 2008 (4:03pm)

LC0038

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act removing the termination date and revising language related to economic credentialing of physicians and conflicts of interest, referrals, and competition among health care providers; 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 -- referrals.

(1) A conflict of interest exists under the following conditions:

(a) when referrals by a physician who has an investment interest in a specialty hospital and privileges at a nonprofit community hospital create a pattern that demonstrates consistent referrals based on a patient's health insurance coverage, ability to pay, or a determination that the amount paid to the specialty hospital routinely surpasses the amount paid from referrals by that physician to a nonprofit community hospital at which the physician has privileges; or

(b) (i) when a physician serves on the board of directors of a nonprofit community hospital and has an investment interest in a specialty hospital or an ancillary facility that competes with services offered at the nonprofit community hospital.

(ii) Subsection (1)(b)(i) does not constitute a conflict of interest if the nonprofit community hospital began offering a service after the ancillary facility described in subsection (1)(b)(i).

(2) (a) In the case of a conflict of interest described under subsection (1)(a) and (1)(b), a hospital may refuse to appoint a physician to the governing body of the hospital and may deny appointment as a chief of the medical staff or a presiding officer of a medical staff committee.

(b) A hospital may deny privileges in the case of a conflict of interest under subsection (1)(a).

(3) The provisions of 50-5-117 do not apply under the conditions in subsection (2)(b).

(4) A referral by a health care provider licensed under Title 37 to a health care facility licensed under Title 50, a pharmacy licensed under Title 37, chapter 7, or an ancillary service in which the health care provider has an ownership interest or investment interest or with which the health care provider licensed under Title 37 has an exclusive contract to obtain or provide the service must include a written notification to the patient of no more than 100 words that other health care providers offer the same service and that the patient has a choice of where to obtain the ancillary service.

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

(a) "Ancillary service" means a physical or mental health service provided at a health care facility as described in 50-5-

101(23) (a), or by facility accepted as a health care provider under Title 33, or a support service that provides medical equipment, medical supplies, or personnel service arrangements for a health care facility;

(b) "Investment interest" means an equity or debt security interest issued by a business entity, including shares of stock in a corporation, or units or other interests in a partnership.

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:

(i) of economic discrimination, as described in 50-5-117 unless the provision of [section 1] applies; or

(ii) the applicant is licensed under Title 37, chapter 6.

(b) A hospital may limit privileges or membership based on education, training, or competency as defined by the Board of Medical Examiners provided for in Title 37, chapter 3.

~~(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 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) If an exclusive contract with a physician or a group of physicians appears to diminish competition, then the exclusive contract must be covered by a certificate of public advantage, as described in this title, chapter 4, part 6.

(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~~

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~~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} Effective date.** [This act] is effective on passage and approval.

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