_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF PHYSICAL, REHABILITATIVE, AND DEVELOPMENTAL HEALTH CARE PROFESSIONALS; TRANSFERRING PROVISIONS RELATED TO ATHLETIC TRAINERS, OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS FROM INDIVIDUAL PRACTICE ACT CHAPTERS TO THE BOARD OF PHYSICAL, REHABILITATIVE, AND DEVELOPMENTAL HEALTH CARE PROFESSIONALS PRACTICE ACT CHAPTER; CONSOLIDATING DEFINITIONS; CONSOLIDATING PROVISIONS; RENUMBERING SECTIONS; REORGANIZING SECTIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-1017, 15-6-217, 33-22-128, 33-22-138, 33-30-1018, 33-30-1019, 37-1-148, 37-16-103, 37-16-402, 37-20-303, 37-24-104, 37-78-102, 39-51-201, AND 39-71-116, MCA; AND REPEALING SECTIONS 37-11-101, 37-11-107, 37-11-304, 37-11-306, 37-11-311, 37-11-312, 37-11-321, 37-15-101, 37-15-102, 37-15-302, 37-15-307, 37-15-310, 37-15-311, 37-15-402, 37-24-101, 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108, 37-24-109, 37-24-302, 37-24-306, 37-24-312, 37-36-101, 37-36-203, AND 37-78-201, MCA."

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

NEW SECTION. **Section 1. Duties of board -- rulemaking authority.** (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) establish criteria for licensure;

(c) adopt fees in accordance with 37-1-134 for:

(i) applications for licensure;

(ii) examinations;

(iii) initial license issuance; and

(iv) license renewal; and

(d) authorize the department to issue and renew licenses to qualified applicants.

(2) The board may adopt rules necessary to implement the provisions of this chapter.

NEW SECTION. **Section 2. Athletic trainer -- license required -- practice -- exemptions.** (1) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 12, 20, or 26, 37-11-301, or 37-24-301 from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, or other school employee, or a supervised volunteer, from providing first aid, preventative care, or continuous follow-up care of athletes and athletic injuries in a school setting.

NEW SECTION. **Section 3. Criminal record background check.** (1) As provided in 37-1-307, the board shall require each applicant for licensure for a profession listed in subsection (3) to submit a full set of the applicant's fingertips to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.

(2) The board may require licensees renewing their licenses for a profession listed in subsection (3) to submit a full set of their fingerprints to the board for the purpose of obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation.

(3) The provisions of this section apply to licenses for:

(a) audiologist;

(b) occupational therapist;

(c) occupational therapy assistant;

(d) physical therapist;

(e) physical therapist assistant; and

(f) speech-language pathologist.

NEW SECTION. **Section 4. Athletic trainer -- scope of practice -- representation to public.** (1) The practice of athletic training includes the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The scope of practice includes:

(a) the use of heat, cold, light, sound, electricity, exercise, reconditioning, and mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(2) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection. Except for an individual listed in [section 2(2)(a)], an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

NEW SECTION. **Section 5. Occupational therapy -- scope of practice.** (1) The practice of occupational therapy is the therapeutic use of purposeful goal-directed activities and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by disease or disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles.

(2) The practice encompasses evaluation, assessment, treatment, consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes.

(3) Occupational therapy services may be provided individually, in groups, or through social systems.

(4) Occupational therapy interventions include but are not limited to:

(a) evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities;

(b) developing perceptual motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) application of physical agent modalities, as described in this section, as an adjunct to or in

preparation for engagement in purposeful goal-directed activity;

(l) promoting health and wellness;

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

NEW SECTION. **Section 6. Occupational therapy -- modalities.** (1) Except as provided in subsection (3), an individual may not use occupational therapy techniques involving superficial physical agent modalities as described in subsection (4) unless the individual:

(a) is a licensed occupational therapist under this chapter;

(b) limits application of superficial agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand; and

(c) has successfully completed 16 hours of instruction or training in superficial physical agent modalities and documents competency, as approved by the board, in the following areas:

(i) principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modalities;

(ii) physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of selected modalities;

(iii) the response of normal and abnormal tissue to the application of selected modalities;

(iv) indications and contraindications related to the selection and application of the modality;

(v) guidelines for the treatment or administration of the modality within the philosophical framework of occupational therapy;

(vi) guidelines for educating the patient, including information about risks and benefits of the occupational therapy techniques;

(vii) safety rules and precautions related to the selected modalities;

(viii) methods for documenting the effectiveness and immediate and long-term effects of treatment in relation to task-oriented activities; and

(ix) characteristics of and guidelines for the use of therapy equipment, including safe operation, adjustment, and care and maintenance of the equipment.

(2) Except as provided in subsection (3), an individual may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the individual:

(a) is licensed under this chapter; and

(b) limits application of sound and electrical physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand to restore and enhance upper extremity function.

(3) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply superficial physical agent modalities or deep physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

(4) (a) As used in this section, "physical agent modalities" are those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity.

(b) Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity.

(c) Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices.

(d) Use of superficial physical agent modalities or sound and electrical physical agent modality devices is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of this section.

NEW SECTION. **Section 7. Occupational therapy -- topical medications.** (1) An individual may not utilize occupational therapy techniques involving topical medications as described in this section unless the individual has successfully completed the following:

(a) 5 hours of instruction or training in pharmacology relevant to topical medications listed in subsection (3);

(b) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(c) (i) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(ii) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

(2) A licensed occupational therapist who meets the requirements of subsection (1) may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process in which topical medications are applied through the use of electricity; and

(c) phonophoresis, a process in which topical medications are applied through the use of ultrasound.

(3) A licensed occupational therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(4) (a) Topical medications applied or administered by a licensed occupational therapist must:

(i) be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications; and

(ii) be purchased from a pharmacy certified under 37-7-321.

(b) Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(5) A licensed occupational therapist who applies or administers topical medications shall keep appropriate records with respect to those medications.

NEW SECTION. **Section 8. Physical therapy -- scope of practice -- evaluation and treatment.** (1) The practice of physical therapy includes the evaluation, treatment, and instruction of human beings, in person or through telehealth, to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) Physical therapy evaluation includes:

(a) the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures;

(b) the development of a plan of treatment;

(c) consultative, educational, and other advisory services; and

(d) instruction and supervision of supportive personnel.

(3) Physical therapy treatment includes:

(a) for therapeutic effects, physical measures, activities, and devices;

(b) for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, and mobilization; and

(c) physical agents, including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(4) The evaluation and treatment procedures listed in subsections (2) and (3) may be performed by a licensed physical therapist without referral.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", and "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

NEW SECTION. **Section 9. Speech-language pathology and audiology -- scope of practice -- representation.** (1) The practice of speech-language pathology means nonmedical diagnosis, assessment,

and treatment services relating to speech-language pathology as provided by board rule.

(2) A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(3) The practice of audiology includes nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the ordering, selling, dispensing, and fitting of over-the-counter hearing aids and prescription hearing aids.

(4) A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

Section 10. Section 2-6-1017, MCA, is amended to read:

"**2-6-1017. Prohibition on dissemination or use of distribution lists -- exceptions -- penalties.** (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list except by the public agency or another public agency without first securing the permission of those on the list.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of

records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 37, chapters 1 through 4, 6 through 10, 12 through 14, 16 through 20, ~~22~~ 25 through 29, 31, 33, 34, ~~through 36~~ 39, 40, 45 through 47, ~~48, 50,~~ 49 through 51, ~~53,~~ 54 through 56, 60, 65 through 69, 72, ~~and~~ 73, 77, and 78, and Title 50, chapters 39, 72, 74, and 76;

(e) persons who own property in a county water and/or sewer district provided for in 7-13-2275(4)(d); or

(f) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 11. Section 15-6-217, MCA, is amended to read:

"**15-6-217. Exemption for vehicle of certain health care professionals.** A motor vehicle that is brought, driven, or coming into this state is exempt from the registration fees imposed in 15-24-301 if the motor vehicle is registered in another state or country by a nonresident person who is a licensed health care professional~~,~~ as provided in Title 37, chapter 3, 8, ~~11,~~ 14, 20, 25, 28, or 34, or a physical therapist as provided in Title 37, chapter 78, and who is employed in Montana by a rural health care facility that is located in an area that has been:

(1) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(2) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3)."

Section 12. Section 33-22-128, MCA, is amended to read:

"**33-22-128. Coverage for children who are deaf or hard of hearing -- definitions.** (1) Health insurance coverage sold in the group or individual market in this state must provide coverage for diagnosis and treatment of various auditory ranges for a covered child 18 years of age or younger in accordance with subsection (2).

(2) (a) Except as provided in subsection (2)(b), coverage under this section, in addition to diagnosis, must include treatment that is:

(i) a medical necessity; and

(ii) prescribed, provided, or ordered by a licensed health care provider to treat various auditory ranges of the covered child.

(b) Treatment may not include more than one hearing device with required accessories or amplification device with required accessories for each ear every 3 years or as required by an audiologist licensed under Title 37, chapter ~~15~~ 78.

(3) Benefits provided under this section may not be construed as limiting physical health benefits that are otherwise available to the covered child.

(4) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment

provisions and utilization review as provided in Title 33, chapter 32.

(b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical care covered under the plan may not be imposed on the coverage under this section.

(5) This section also applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, school district, or other political subdivision of this state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(6) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

(7) As used in this section, the following definitions apply:

(a) "Amplification device" means a hearing device, hearing aid, or wearable, nondisposable, nonexperimental instrument or device designed to aid or compensate for various auditory ranges and any parts, attachments, or accessories for the instrument or device, including an ear mold but excluding batteries and cords.

(b) "Generally accepted standards of medical practice" means standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, physician specialty society recommendations, the view of physicians practicing in relevant clinical areas, and any other relevant factors.

(c) "Health care provider" means an individual licensed:

(i) under Title 37, chapter 3~~, 15,~~ or 20~~.~~ ;

(ii) as a speech-language pathologist or audiologist under Title 37, chapter 78; or

(iii) ~~A~~ as a nurse practitioner ~~licensed~~ under Title 37, chapter 8~~, also is a health care provider for the purposes of this section~~.

(d) "Medical necessity" means health care services that a physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, disease, or its symptoms, and that are:

(i) in accordance with generally accepted standards of medical practice;

(ii) clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for the patient's illness, injury, or disease;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease.

(e) "Various auditory ranges" means a diversity in the hearing process that may occur in the outer, middle, or inner ear, whereby sound waves are not converted to electrical signals and nerve impulses are not transmitted to the brain to be interpreted."

Section 13. Section 33-22-138, MCA, is amended to read:

"**33-22-138. Coverage for telehealth services -- rulemaking.** (1) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for health care services must provide coverage for health care services provided by a health care provider or health care facility by means of telehealth if the services are otherwise covered by the policy, certificate, contract, or agreement.

(2) A policy, certificate, contract, or agreement may not:

(a) impose restrictions involving:

(i) the site at which the patient is physically located and receiving health care services by means of telehealth; or

(ii) the site at which the health care provider is physically located and providing the services by means of telehealth; or

(b) distinguish between telehealth services provided to patients in rural locations and telehealth services provided to patients in urban locations.

(3) Coverage under this section must be equivalent to the coverage for services that are provided in person by a health care provider or health care facility.

(4) Nothing in this section may be construed to require:

(a) a health insurance issuer to provide coverage for services that are not medically necessary,

subject to the terms and conditions of the insured's policy;

(b) coverage of an otherwise noncovered benefit;

(c) a health care provider to be physically present with a patient at the site where the patient is located unless the health care provider who is providing health care services by means of telehealth determines that the presence of a health care provider is necessary; or

(d) except as provided in 16-12-509 or as provided in Title 37 and related administrative rules, a patient to have a previously established patient-provider relationship with a specific health care provider in order to receive health care services by means of telehealth.

(5) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions. Deductibles, coinsurance, copayment, or other limitations that are imposed on the coverage for services provided by means of telehealth may not be more than deductibles, coinsurance, copayment, or other limitations that are applicable to other medical services covered under the plan.

(6) This section does not apply to disability income, hospital indemnity, medicare supplement, specified disease, or long-term care policies.

(7) The commissioner may adopt rules necessary to implement the provisions of this section.

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

(a) "Health care facility" means a critical access hospital, hospice, hospital, long-term care facility, mental health center, outpatient center for primary care, or outpatient center for surgical services licensed pursuant to Title 50, chapter 5.

(b) "Health care provider" means an individual:

(i) licensed pursuant to Title 37, chapter 3, 4, 6, 7, 10, ~~11, 15,~~ 17, 20, 22, 23, 24, 25, 26, or 35;

(ii) licensed pursuant to Title 37, chapter 78, to practice as an audiologist, occupational therapist, physical therapist, or speech-language pathologist;

~~(ii)~~ (iii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an advanced practice registered nurse;

~~(iii)~~ (iv) certified by the American board of genetic counseling as a genetic counselor; or

~~(iv)~~ (v) certified by the national certification board for diabetes educators as a diabetes educator.

(c) (i) "Telehealth" means the use of audio, video, or other telecommunications technology or

media, including audio-only communication, that is:

(A) used by a health care provider or health care facility to deliver health care services; and

(B) delivered over a secure connection that complies with state and federal privacy laws.

(ii) The term does not include delivery of health care services by means of facsimile machines or electronic messaging alone. The use of facsimile and electronic message is not precluded if used in conjunction with other audio, video, or telecommunications technology or media.

(iii) For physicians providing written certification of a debilitating medical condition pursuant to 16-12-509, the term does not include audio-only communication unless the physician has previously established a physician-patient relationship through an in-person encounter."

Section 14. Section 33-30-1018, MCA, is amended to read:

"**33-30-1018. Coverage required for services provided by physical therapist.** A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a physical therapist licensed pursuant to Title 37, chapter ~~11~~ 78, if the health care services that physical therapists are licensed to perform are covered by the contracts or certificates."

Section 15. Section 33-30-1019, MCA, is amended to read:

"**33-30-1019. Coverage for services provided under freedom of choice for auxiliary health services.** A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a speech-language pathologist or audiologist licensed pursuant to Title 37, chapter ~~15~~ 78, or an addiction counselor licensed under Title 37, chapter 39, if the health care services that speech-language pathologists, audiologists, or addiction counselors are licensed to perform are covered by the contracts or certificates."

Section 16. Section 37-1-148, MCA, is amended to read:

"**37-1-148. Apprenticeships -- licensure.** (1) A board or program shall grant a license listed in subsection (3) of this section to a person who completes an apprenticeship program under Title 39, chapter 6, in the relevant occupation or profession.

(2) An applicant for licensure through an apprenticeship program shall meet the same exam and fee requirements as an applicant who completes an educational program prior to licensure.

(3) The following licenses are subject to the provisions of this section:

(a) for the board of allied health care professionals:

(i) radiologic technologist, Title 37, chapter 14; and

(ii) clinical laboratory technician, Title 37, chapter 34;

(b) for the board of barbers and cosmetologists, Title 37, chapter 31:

(i) barbering;

(ii) barbering nonchemical;

(iii) cosmetology;

(iv) electrology;

(v) esthetics; and

(vi) manicuring;

(c) for the board of behavioral health, Title 37, chapter 39:

(i) addiction counseling; and

(ii) peer support specialist;

(d) for the board of funeral service, Title 37, chapter 19, mortician;

(e) for the board of massage therapy, Title 37, chapter 33, massage therapist;

(f) for the board of medical examiners, Title 37, chapter 3, emergency medical technician;

(g) for the board of nursing, Title 37, chapter 8:

(i) licensed practical nurse;

(ii) medication aide II; and

(iii) registered nurse;

(h) for the board of pharmacy, Title 37, chapter 7, pharmacy technician;

(i) for the board of physical, rehabilitative, and developmental health care professionals, Title 37, chapter ~~11~~ 78, physical therapy assistant;

(j) for the board of plumbers, Title 37, chapter 69, journeyman plumber;

(k) for the board of veterinary medicine, Title 37, chapter 18, veterinary technician;

(l) for the department of labor and industry, Title 50, chapter 74:

(i) agricultural class engineer;

(ii) limited low-pressure engineer;

(iii) low-pressure engineer; and

(iv) third-class engineer;

(m) for the department of labor and industry, Title 37, chapter 72, construction blaster;

(n) for the department of labor and industry, Title 50, chapter 76, licensed first-class crane and hoist engineer;

(o) for the department of labor and industry, Title 37, chapter 73:

(i) elevator contractor;

(ii) elevator inspector; and

(iii) elevator mechanic;

(p) for the department of labor and industry, Title 37, chapter 16, hearing aid dispenser; and

(q) for the state electrical board, Title 37, chapter 68, journeyman electrician.

(4) Each board or program shall adopt rules for the implementation of this section."

Section 17. Section 37-16-103, MCA, is amended to read:

"**37-16-103. Exemptions.** This chapter does not apply to a person who is:

(1) a physician licensed to practice by the state board of medical examiners;

(2) engaged in the practice of fitting prescription hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or

(3) licensed as an audiologist under the provisions of Title 37, chapter ~~15~~ 78."

Section 18. Section 37-16-402, MCA, is amended to read:

"**37-16-402. Hearing aid dispenser license required -- qualifications -- fee.** (1) An applicant for a license shall pay a fee fixed by the department and shall show to the satisfaction of the department that the applicant:

(a) has a current license as an audiologist under Title 37, chapter ~~15~~ 78; or

(b) (i) has a high school diploma or equivalent;

(ii) meets training requirements established by department rule; and

(iii) has passed an examination prescribed by department rule.

(2) An applicant who has not met the training and examination requirements in this section may apply for a trainee hearing aid dispenser license as prescribed in this chapter and department rule."

Section 19. Section 37-20-303, MCA, is amended to read:

"**37-20-303. Exemptions from licensure requirement.** (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:

(a) a physician assistant providing services in an emergency or catastrophe, as provided in 37-20-410;

(b) a federally employed physician assistant;

(c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;

(d) a student physician assistant when practicing in a hospital or clinic in which the student is training;

(e) a physical therapist licensed pursuant to Title 37, chapter ~~11~~ 78;

(f) a medical assistant, as provided in 37-3-104;

(g) an emergency care provider licensed pursuant to Title 50, chapter 6; or

(h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.

(2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant."

Section 20. Section 37-24-104, MCA, is amended to read:

"**37-24-104. Exemptions.** Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which the person is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in ~~37-24-103~~ [section 5] but does not represent to the public that the person is an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates the person's status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the national board for certification in occupational therapy, inc. (NBCOT); or

(7) a person employed as an occupational therapy aide."

Section 21. Section 37-78-102, MCA, is amended to read:

"**37-78-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Athlete" means an individual who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) "Athletic injury" means a physical injury received by an athlete.

(3) "Athletic trainer" means an individual licensed under 37-36-201 and who performs the functions in accordance with [section 4].

(4) "Athletic training" means the provisions of the services specified under [section 4] by an individual who is licensed as an athletic trainer.

(5) "Audiologist" means an individual licensed under 37-15-303 and who performs the functions in accordance with [section 9].

(6) "Audiology assistant" means any individual meeting the minimum requirements established by the board of physical, rehabilitative, and developmental health care professionals who works directly under the supervision of a licensed audiologist.

~~(1)~~ (7) "Board" means the board of physical, rehabilitative, and developmental health care professionals provided for in 2-15-1754.

(8) "Certified occupational therapy assistant" means an individual who:

(a) is licensed to assist in the practice of occupational therapy under this chapter; and

(b) works under the general supervision of an occupational therapist in accordance with the provisions of the national board for certification in occupational therapy, inc., or its successor, that have been adopted by the board.

~~(2)~~ (9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) (a) "Facilitator" means a trained individual who is physically present with the patient and facilitates telehealth at the direction of a speech-language pathologist or an audiologist.

(b) A facilitator may be but is not limited to a speech-language pathology assistant or an audiology assistant.

(11) "Occupational therapist" means an individual who is licensed under 37-24-303 and who

performs the functions in accordance with [section 5].

(12) "Occupational therapy" means the provisions of the services specified under [section 5] by an individual who is licensed as an occupational therapist.

(13) (a) "Occupational therapy aide" means an individual who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy.

(b) The activities of an occupational therapy aide do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(14) "Occupational therapy assistant" means an individual who is licensed to assist in the practice of occupational therapy under this chapter and who works under the general supervision of an occupational therapist.

(15) "Over-the-counter hearing aid" has the definition specified in 21 CFR 800.30 in effect on January 1, 2023.

(16) "Physical agent modalities" means those modalities authorized for administration by an occupational therapist as provided in [section 6].

(17) "Physical therapist" or "physiotherapist" means an individual who is licensed under 37-11-303 and who performs the functions in accordance with [section 8].

(18) "Physical therapist assistant" or "assistant" means an individual who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(19) "Physical therapist assistant student" means an individual:

(a) who is enrolled in an accredited physical therapist assistant curriculum; and

(b) who, as part of the clinical and educational training, is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(20) "Physical therapy" means the provision of services specified under [section 8] by an individual

who is licensed as a physical therapist, physiotherapist, or physical therapist assistant.

(21) "Physical therapy aide" or "aide" means an individual:

(a) who aids in the practice of physical therapy;

(b) whose activities require on-the-job training; and

(c) who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(22) "Physical therapy student" or "physical therapy intern" means an individual:

(a) who is enrolled in an accredited physical therapy curriculum;

(b) who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting; and

(c) who is supervised by a licensed physical therapist as described in 37-11-105.

(23) "Practice of audiology" means the provisions of the services specified under [section 9] by an individual who is licensed as an audiologist or audiology assistant.

(24) "Practice of speech-language pathology" means the provisions of the services specified under [section 9] by an individual who is licensed as a speech-language pathologist or speech-language pathology assistant.

(25) (a) "Prescription hearing aid" has the definition specified in 21 CFR 801.422 in effect on January 1, 2023.

(b) The term does not include an over-the-counter hearing aid.

(26) "Purposeful goal-directed activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

(27) "Speech-language pathologist" means an individual who is licensed under 37-15-303 and who performs the functions in accordance with [section 9].

(28) "Speech-language pathology assistant" means an individual meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

(29) "Telehealth" has the same meaning as provided in 37-2-305.

(30) "Topical medications" means medications applied locally to the skin and includes only medications listed in [section 7] and 37-11-106(2) for which a prescription is required under state or federal law."

Section 22. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the

paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the unemployment insurance appeals board provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(j). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily

responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter ~~11~~ 78;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer, including:

(A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;

(B) repeated inexcusable tardiness following warnings by the employer;

(C) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(D) false statements made as part of a job application process, including but not limited to deliberate falsification of the individual's criminal history, work record, or educational or licensure achievements;

(E) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective bargaining agreement by which the employee is covered. However, an employee who engages in lawful union activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).

(G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(H) actions by the claimant who, while acting within the scope of employment, commits violations of law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do business;

(ii) deliberate violations or disregard of established employer standards or of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

(20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(21) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(22) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(24) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration

payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service;

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318; or

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 23. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the

decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.

(5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.

(13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by

the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(15) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.

(b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.

(17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(18) "Invalid" means one who is physically or mentally incapacitated.

(19) "Limited liability company" has the meaning provided in 35-8-102.

(20) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical services.

(22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(24) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(27) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment, as determined by the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease and may not be based exclusively on complaints of pain.

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(28) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(29) "Primary medical services" means treatment prescribed by the treating physician, for conditions resulting from the injury or occupational disease, necessary for achieving medical stability.

(30) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

(31) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(32) "Reasonably safe place to work" means that the place of employment has been made as free

from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(33) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(34) "Regular employment" means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.

(35) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (35), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(36) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(37) "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

(38) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(39) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a

work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(40) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(41) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(42) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker's medical services for the treatment of a worker's compensable injury or occupational disease and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (42)(a) through (42)(e) and (42)(h) who is licensed or certified in another state;

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8; or

(h) a physical therapist licensed by the state of Montana under Title 37, chapter ~~11~~ 78.

(43) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(44) "Year", unless otherwise specified, means calendar year."

NEW SECTION. **Section 24. Repealer.** The following sections of the Montana Code Annotated are repealed:

37-11-101. Definitions.

37-11-107. Board adoption of protocols.

37-11-304. Application for examination.

37-11-306. Issuance of license -- certificate as evidence.

37-11-311. Display of license.

37-11-312. Criminal record background check.

37-11-321. Refusal to issue or renew license.

37-15-101. Purpose.

37-15-102. Definitions.

37-15-302. Application forms.

37-15-307. Application and license fee.

37-15-310. Deposit of moneys received.

37-15-311. Municipal tax prohibited.

37-15-402. Criminal background check.

37-24-101. Short title.

37-24-103. Definitions.

37-24-105. Use of superficial physical agent modalities.

37-24-106. Use of sound and electrical physical agent modalities.

37-24-107. Use of occupational therapy techniques involving topical medications.

37-24-108. Application and administration of topical medications -- prescription, purchasing, and recordkeeping requirements.

37-24-109. Board adoption of protocols.

37-24-302. Application.

37-24-306. Issuance of license.

37-24-312. Criminal record background check.

37-36-101. Definitions.

37-36-203. Representation to public -- practice -- exemptions.

37-78-201. Duties of board -- rulemaking authority.

NEW SECTION. **Section 25. Directions to code commissioner.** (1) Sections 37-11-102, 37-11-301, 37-15-103, 37-15-301, 37-15-314, 37-24-104, and 37-24-301 are intended to be renumbered and codified as an integral part of Title 37, chapter 78, part 2.

(2) Sections 37-11-103, 37-11-105, 37-11-106, 37-11-303, 37-11-310, 37-15-303, 37-15-315, 37-24-303, 37-36-201, and 37-36-204 are intended to be renumbered and codified as a new part in Title 37, chapter 78.

(3) Sections 37-11-316, 37-15-401, and 37-24-401 are intended to be renumbered and codified as a new part in Title 37, chapter 78.

(4) The code commissioner is instructed to change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2027 legislature, to reflect the new section numbers assigned pursuant to this section.

(5) Any section enacted by the 2027 legislature that is to be codified in Title 37, chapter 11, 15, 24, or 36, must be codified as an integral part of Title 37, chapter 78, and the provisions of Title 37, chapter 78, apply to the enacted sections.

NEW SECTION. **Section 26. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 78, part 1, and the provisions of Title 37, chapter 78, part 1, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 37, chapter 78, part 2, and the provisions of Title 37, chapter 78, part 2, apply to [sections 2 and 3].

(3) [Sections 4 through 9] are intended to be codified as a new part in Title 37, chapter 78, and the provisions of Title 37, chapter 78, apply to [sections 4 through 9].

NEW SECTION. **Section 27. Saving clause.** The provisions of 37-11-312, 37-15-402, and 37-24-312 remain operative and in effect until the provisions of [section 5] are approved by the federal bureau of

investigation.

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