_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE MEDICAL ASSISTANCE PROGRAM; ESTABLISHING A MEDICAL ASSISTANCE PROGRAM FOR ALL PARTICIPATING BOARDS; ESTABLISHING A MEDICAL ASSISTANCE PROGRAM COUNCIL; PROVIDING FOR POWERS AND DUTIES; ESTABLISHING A PETITION FOR RELEASE PROCESS FOR PARTICIPANTS IN THE MEDICAL PROGRAM; PROVIDING FOR CONFIDENTIALITY OF CERTAIN INFORMATION; REVISING AUDIT STANDARDS FOR THE MEDICAL ASSISTANCE PROGRAM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-131, 37-2-701, 37-3-203, 37-7-201, 37-8-202, AND 37-12-201, MCA; REPEALING SECTIONS 37-2-202, 37-2-316, 37-4-311, AND-37-18-204, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Medical assistance program.** (1) There is a medical assistance program for licensees of the participating boards. The purpose of the medical assistance program is to monitor and support licensees who are subject to the jurisdiction of a board or program as provided in subsection (2) and who are physically or mentally impaired by a substance use disorder, substance-related condition, mental health condition, or chronic physical illness.

(2) The following boards and programs participate in the medical assistance program:

(a) the board of medical examiners established in 2-15-1731;

(b) the board of dentistry established in 2-15-1732;

(c) the board of pharmacy established in 2-15-1733;

(d) the board of nursing established in 2-15-1734;

(e) the board of chiropractors established in 2-15-1737;

(f) the board of psychologists established in 2-15-1741;

(g) the board of veterinary medicine established in 2-15-1742;

(h) the board of behavioral health established in 2-15-1744; and

(i) the emergency care provider program provided for in Title 50, chapter 6.

NEW SECTION. **Section 2. Medical assistance program council -- membership.** (1) There is a medical assistance program council.

(2) The council consists of nine members:

(a) a professional member chosen by the board of medical examiners established in 2-15-1731;

(b) a professional member chosen by the board of dentistry established in 2-15-1732;

(c) a professional member chosen by the board of pharmacy established in 2-15-1733;

(d) a professional member chosen by the board of nursing established in 2-15-1734;

(e) a professional member chosen by the board of chiropractors established in 2-15-1737;

(f) a professional member chosen by the board of psychologists established in 2-15-1741;

(g) a professional member chosen by the board of veterinary medicine established in 2-15-1742;

(h) a professional member chosen by the board of behavioral health established in 2-15-1744; and

(i) a designee of the commissioner of the department of labor and industry who shall serve as presiding officer.

NEW SECTION. **Section 3. Departmental rulemaking.** (1) The department may adopt rules:

(a) for the operation of the council;

(b) for the petition for release pursuant to [section 5]; and

(c) as necessary to carry out the provisions of [sections 1 through 7].

(2) The medical assistance program council established in [section 2] shall review rules proposed by the department governing the medical assistance program and procedures of the council.

NEW SECTION. **Section 4. Powers and duties.** The medical assistance program council established in [section 2] shall:

(1) receive and make recommendations on petitions filed pursuant to [section 5];

(2) advise the department regarding the medical assistance program to include recommendations regarding any contracting for services of the program; and

(3) review complaints filed against the medical assistance program.

NEW SECTION. **Section 5. Petition for release.** (1) A licensee ordered to participate in the medical assistance program may petition for release from the program if the licensee meets all the following requirements:

(a) it is more than 1 year from the final order of the licensing board, inclusive of all appeals;

(b) the petition includes the written opinion of a medical provider responsible for the treatment of the licensee advocating for release from the program;

(c) it is not within 1 year of a final order denying a petition for release, inclusive of all appeals; and

(d) the licensee has satisfied all requirements for a petition for release as provided by rule.

(2) (a) The department shall forward a completed petition to the medical assistance program within 7 days of receipt. The medical assistance program shall respond to the petition within 14 days of receipt.

(b) The medical assistance program council established in [section 2] shall review the petition, response, and final order of the board that ordered participation in the medical assistance program within 60 days of the department's receipt of the completed petition. The council may recommend release or denial of release, but it may not recommend amendment, modification, or any other action based on its review.

(c) A licensee whose petition was denied, or the department, may challenge the council's recommendation by filing a notice with the screening panel of the applicable licensing board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a notice filed under subsection (2) must be considered by the screening panel as provided in 37-1-308.

(b) No further written response from the licensee or the medical assistance program is required before consideration by the screening panel.

(c) The exclusive issue for consideration is a recommendation for release from the medical assistance program based on the license holder's fitness to practice and in enforcement of the board's duties to protect public health, safety, and welfare.

(4) The burden is on the party challenging the recommendation of the council to prove by a

preponderance of the evidence that a licensee should be released or should not released from the medical assistance program.

(5) Nothing in this section prohibits the medical assistance program and a licensee from reaching agreement as to release from the program.

(6) After 5 years of participation in the medical assistance program, a licensee is presumed to be rehabilitated and safe to practice and must be released from the medical assistance program. The medical assistance program may file a complaint pursuant to 37-1-308 against a licensee released based on this presumption.

NEW SECTION. **Section 6. Confidentiality of medical assistance program information -- health care information.** (1) The proceedings and records of the medical assistance program established in [sections 1 through 7] or relating to a licensee who has received or is receiving assistance from the medical assistance program:

(a) are confidential and are considered to be proceedings and records of a professional standards review committee under 37-2-201; and

(b) are not subject to discovery or introduction into evidence in any administrative or judicial proceeding other than a disciplinary proceeding against the licensee before the applicable licensing board and proceedings under [sections 1 through 7]. If the proceedings and records are introduced into evidence in a disciplinary proceeding, the introduced materials are public unless otherwise protected by law.

(2) Any health care information as defined in 50-16-803 that is maintained by a health care provider in the provision of health care services to a licensee participating in the medical assistance program provided for in [sections 1 through 7] is subject to discovery from the licensee or the health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

NEW SECTION. **Section 7. Medical assistance program audits.** Every 5 years, the medical assistance program provided for in [sections 1 through 7] must be audited for performance objectives as determined by the department. The department shall divide the costs between each licensing board in [section 1(2)] for an external audit over a corresponding period.

Section 8. Section 37-1-131, MCA, is amended to read:

"**37-1-131. Duties of boards -- quorum required.** (1) Under the active supervision of the state as described in 37-1-121(1)(d), a quorum of each board within the department shall:

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

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) except as provided in 37-1-321, 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 a medical assistance program under ~~chapter 3, 4, 7, 8, 12, or 18~~ [sections 1 through 7] if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

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

(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 under the active supervision of the state as described in 37-1-121(1)(d) 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) request that the applicant make a personal appearance before the screening panel of the board for nonroutine license applications as defined by the board.

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

Section 9. Section 37-2-701, MCA, is amended to read:

"**37-2-701. Report to board of mental or physical impairment.** (1) Notwithstanding any provision of state law dealing with confidentiality, each licensee, any professional standards review organization, any professional association, and any other person may report to the licensee's respective board that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) For a licensee licensed under ~~Title 37, chapter 3, a~~ board or program as provided for in [section 1(2)], 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~~ a substance use disorder, substance-related condition, mental health condition, or chronic physical illness may be reported to the appropriate personnel of the medical

assistance program ~~established by a board~~ provided for in [sections 1 through 7] 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:

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

(B) undergo a reasonable course of recommended treatment, including reasonable aftercare; or

(C) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

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

(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."

Section 10. Section 37-3-203, MCA, is amended to read:

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

(a) adopt rules necessary or proper to carry out the requirements in this chapter and of chapters covering podiatry, physician assistants, and nutritionists as set forth in Title 37, chapters 6, 20, and 25, respectively.

(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 4 and 8 of this chapter as well as Title 37, chapters 6, 20, and 25. The board also may assist the county attorneys of this state in the prosecution of persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection (1)(c).

(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

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

~~(2) (a) The board shall establish a medical assistance 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 illness or chronic physical illness.~~

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

~~(3)~~ (2) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 16-12-502, for the use of marijuana for a debilitating medical condition provided for in Title 16, chapter 12, part 5. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the use of marijuana for a debilitating medical condition.

(b) Except as provided in subsection ~~(3)(c)~~ (2)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the use of marijuana for a debilitating medical condition, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the economic affairs interim committee in accordance with 5-11-210 and shall make a copy of the report available on the board's website.

~~(4)~~ (3) The board may enter into agreements with other states for the purposes of mutual recognition of licensing standards and licensing of physicians from other states under the terms of a mutual recognition agreement."

Section 11. Section 37-7-201, MCA, is amended to read:

"**37-7-201. Powers and duties -- rulemaking authority.** (1) The board shall establish minimum standards for:

(a) necessary pharmacy equipment;

(b) 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;

(c) facilities, including outsourcing facilities, and the environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, distribution, or dispensing of drugs and devices;

(d) monitoring drug therapy; and

(e) maintaining the integrity and confidentiality of prescription information and other confidential patient information.

(2) The department shall inspect, at reasonable times:

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

(b) the appropriate records and the license of any person engaged in the practice of pharmacy to determine compliance with laws governing the legal dispensing, distribution, or manufacture of drugs or devices or the practice of pharmacy.

(3) The department and 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.

(4) The board shall adopt rules concerning:

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

(b) the training, qualifications, employment, and licensure of pharmacy technicians;

(c) under therapeutic classification, the dispensing, distribution, 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 distributors;

(iv) third-party logistics providers as defined in 37-7-602;

(v) persons engaged in the manufacturing, dispensing, or distribution of drugs or devices regarding the practice of pharmacy and authorized under Title 37, chapter 2, Title 50, chapter 31, part 3, Title 50, chapter 32, and this chapter; and

(vi) persons engaged in the dispensing of animal prescription drugs as authorized in Title 37, chapter 18;

(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) establishing and collecting license and registration fees; and

~~(g) establishing a medical assistance 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 illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.~~

~~(h)~~ (g) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice pharmacy by means of telehealth across state lines.

(5) The board may:

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

(b) approve pharmacy practice initiatives that improve the quality of or access to pharmaceutical care, but that fall outside the scope of this chapter. This subsection (5)(b) may not be construed to expand on the definition of the practice of pharmacy."

Section 12. Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants.~~; and~~

~~(j) establish a medical assistance program to assist licensees 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 illness or chronic physical illness. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical~~

~~assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state. For purposes of funding this medical assistance program, the board shall adjust the renewal fee to be commensurate with the cost of the program.~~

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter, including rules describing the circumstances that constitute a low risk of adverse birth outcomes for planned home births attended by a nurse-midwife; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 13. Section 37-12-201, MCA, is amended to read:

"**37-12-201. Organization of board -- powers and duties.** The board shall:

(1) elect annually a president, vice president, and secretary-treasurer from its membership;

(2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming

within the scope of the board;

(3) make a schedule of minimum educational requirements that are without prejudice, partiality, or discrimination as to the different schools of chiropractic;

(4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, the display of licenses, and the registration of interns and preceptors.

(5) make determinations of the qualifications of applicants under this chapter; and

(6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.~~; and~~

~~(7) (a) establish a medical assistance program to assist licensees 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 illness or chronic physical illness. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation.~~

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

~~(c) For the purposes of funding this medical assistance program, the board shall adjust the renewal fee to be commensurate with the cost of the program.~~"

NEW SECTION. **Section 14. Repealer.** The following sections of the Montana Code Annotated are repealed:

37-2-202. Confidentiality of medical assistance program information -- health care information.

37-2-316. Assistance program audits.

37-4-311. Rehabilitation.

37-18-204. Rehabilitation.

NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 7] are intended to be codified as a new part in Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 7].

NEW SECTION. **Section 16. Effective date.** [This act] is effective January 1, 2028.

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