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HOUSE BILL NO. 137

INTRODUCED BY G. OBLANDER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LICENSING AND CERTIFICATION REQUIREMENTS FOR BEHAVIORAL HEALTH PRACTITIONERS; ESTABLISHING EXPERIENCE AND EDUCATION REQUIREMENTS; PROVIDING CONFIDENTIALITY; PROVIDING IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-4-502, 20-9-327, 27-1-1101, 33-30-1019, 33-30-1020, 37-1-401, 37-17-104, 41-3-127, 45-5-231, 45-5-501, 45-5-601, 45-5-709, 53-6-101, ~~AND 53-21-102,~~ AND 53-21-1202, MCA; AND REPEALING SECTIONS 37-22-101, 37-22-102, 37-22-103, 37-22-201, 37-22-301, 37-22-302, 37-22-305, 37-22-307, 37-22-308, 37-22-313, 37-22-401, 37-22-411, 37-22-412, 37-23-101, 37-23-102, 37-23-201, 37-23-202, 37-23-203, 37-23-206, 37-23-213, 37-23-301, 37-23-311, 37-23-312, 37-35-101, 37-35-102, 37-35-103, 37-35-201, 37-35-202, 37-35-204, 37-37-101, 37-37-102, 37-37-201, 37-37-202, 37-37-205, 37-37-301, 37-37-302, 37-38-101, 37-38-102, 37-38-106, 37-38-201, AND 37-38-202, MCA."

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

NEW SECTION. Section 1. Purpose. The practices of social work, professional counseling, marriage and family therapy, addiction counseling, and behavioral health peer support in the state of Montana are professional behavioral health practices affecting the public health, safety, and welfare and are subject to regulation and control in the public interest. It is a matter of public interest and concern that the collective practices of these professions warrant and receive the confidence of the public and that only qualified persons be permitted to practice in the behavioral health field from within or outside of Montana and engage with behavioral health clients located within the state. [Sections 1 through 14] must be liberally construed to carry out these objectives and purposes.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 14], the following definitions apply:

- (1) "Addiction" means the condition or state in which an individual is physiologically or

1 psychologically dependent on alcohol or other drugs. The term includes chemical dependency as defined in 53-
2 24-103.

3 (2) "Addiction counseling" means using the knowledge and skill necessary to provide the
4 therapeutic process of addiction treatment.

5 (3) "Approved examination" means a standardized test or examination of behavioral health
6 knowledge, skills, and abilities that is approved by the board.

7 (4) "Approved program" means a behavioral health educational program accredited or sponsored
8 by an entity that is recognized at the national, regional, or state level and approved by the board.

9 (5) "Approved supervisor" means a supervisor determined by the board to meet standards
10 established by the board for supervision of clinical services.

11 (6) "Baccalaureate social work" means the application of social work theory, knowledge, methods,
12 ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial
13 functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work
14 is generalist practice that includes assessment, planning, intervention, evaluation, case management,
15 information and referral, ~~counseling~~, supervision, consultation, education, advocacy, community organization,
16 research, and the development, implementation, and administration of policies, programs, and activities.

17 (7) "Behavioral health" means the practices of social work, professional counseling, marriage and
18 family therapy, addiction counseling, and peer support regulated under [sections 1 through 14].

19 (8) "Behavioral health disorder" is a diagnosis of:

20 (a) a mental disorder as defined in 53-21-102; or

21 (b) chemical dependency as defined in 53-24-103.

22 (9) "Behavioral health peer support" means the use of personal experience with a behavioral
23 health disorder to provide support, mentoring, guidance, and advocacy to individuals with behavioral health
24 disorders while under the supervision of a mental health professional in an amount, duration, and scope
25 appropriate to the setting and the demonstrated competency and experience of the peer support specialist.

26 (10) "Board" means the board of behavioral health provided for in 2-15-1744.

27 (11) "Clinical professional counseling" means engaging in methods and techniques that include:

28 (a) counseling, which means the therapeutic process of:

1 (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and
2 objectives; or

3 (ii) planning, implementing, and evaluating treatment plans that use treatment interventions to
4 facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and
5 associated distresses that interfere with mental health;

6 (b) assessment, which means selecting, administering, scoring, and interpreting instruments,
7 including psychological tests, evaluations, and assessments, designed to assess an individual's aptitudes,
8 attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods
9 and techniques for understanding human behavior in relation to coping with, adapting to, or changing life
10 situations;

11 (c) counseling treatment intervention, which means those cognitive, affective, behavioral, and
12 systemic counseling strategies, techniques, and methods common to the behavioral sciences that are
13 specifically implemented in the context of a therapeutic relationship, including techniques to treat the perception
14 of chronic pain. Other treatment interventions include developmental counseling, guidance, and consulting to
15 facilitate normal growth and development, including educational and career development.

16 (d) referral, which means evaluating information to identify needs or problems of an individual and
17 to determine the advisability of referral to other specialists, informing the individual of the judgment, and
18 communicating as requested or considered appropriate with the referral sources.

19 (12) (a) "Clinical social work" means the application of professional social work knowledge, skills,
20 and values in the differential diagnosis and treatment of psychosocial function, disability, or impairment,
21 including emotional, mental, and behavioral disorders and the perception of chronic pain. Treatment includes a
22 plan based on a differential diagnosis. Treatment may include but is not limited to the provision of
23 psychotherapy and counseling to individuals, couples, families, and groups across the life span. A clinical social
24 work licensee may also provide the services of baccalaureate and master's social work.

25 (b) The term includes the performance of psychological testing, evaluation, and assessment if the
26 licensee is qualified to administer testing and make evaluations and assessments pursuant to 37-17-104.

27 (13) "Department" means the department of labor and industry provided for in 2-15-1701.

28 (14) "Licensee" means an individual licensed under [sections 1 through 14] to practice social work,

1 clinical professional counseling, addiction counseling, or marriage and family therapy or certified to provide
2 behavioral health peer support.

3 (15) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional
4 disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and
5 family therapy involves:

6 (a) the professional application of psychotherapeutic and family system theories and techniques,
7 counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples,
8 and families;

9 (b) the provision of professional marriage and family therapy services to individuals, couples, and
10 families, singly or in groups, either directly or through public or private organizations; and

11 (c) the performance of psychological testing, evaluation, and assessment if the licensee is
12 qualified to administer testing and make evaluations pursuant to 37-17-104.

13 (16) "Master's social work" means the application of social work theory, knowledge, methods, and
14 ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial
15 functioning of individuals, couples, families, groups, organizations, and communities. Master's social work
16 includes the application of specialized knowledge and advanced skills in the areas of assessment, treatment
17 planning, implementation and evaluation, case management, information and referral, supervision, consultation,
18 education, research, advocacy, community organization, and the development, implementation, and
19 administration of policies, programs, and activities.

20 (17) "Mental health professional" means:

21 (a) a physician licensed under Title 37, chapter 3;

22 (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
23 psychiatric mental health nursing;

24 (c) a psychologist licensed under Title 37, chapter 17;

25 (d) a social worker licensed under [section 10];

26 (e) a professional counselor licensed under [section 11];

27 (f) an addiction counselor licensed under [section 12]; or

28 (g) a marriage and family therapist licensed under [section 13].

1 (18) "Psychotherapy" means the use of psychosocial methods within a professional relationship to
2 assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that
3 affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their
4 interpersonal processes.

5 (19) "Social work" means the professional practice directed toward helping people achieve more
6 adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge
7 of social resources, human capabilities, and the roles that individual motivation and social influences play in
8 determining behavior and involves diagnoses and the application of social work techniques.

9 (20) "Supervised work experience" means work in a behavioral health field after receipt of the
10 required degree and license but under:

- 11 (a) the supervision of an approved supervisor; and
- 12 (b) terms and conditions prescribed by the board by rule.

13

14 **NEW SECTION. Section 3. Duties of board.** The board:

- 15 (1) shall meet at least annually to perform the duties described in [sections 1 through 14];
- 16 (2) shall adopt rules to carry out the provisions of [sections 1 through 14], including but not limited
17 to rules that set professional, practice, and ethical standards for licensees;
- 18 (3) may adopt rules governing the issuance of licenses of special competence in particular areas
19 of practice as a clinical professional counselor. The board shall establish criteria for each particular area for
20 which a license is issued.
- 21 (4) shall recommend prosecutions for violations of [sections 1 through 14] to the attorney general
22 or the appropriate county attorney, or both.

23

24 **NEW SECTION. Section 4. Fees.** Each applicant for a license or certification shall, upon submitting
25 an application to the board, pay an application fee set by the department.

26

27 **NEW SECTION. Section 5. Background checks.** (1) As a prerequisite to the issuance of a license,
28 candidate license, or certification, the board shall require an applicant to submit fingerprints for the purposes of

1 (2) This section does not apply to addiction counselors or behavioral health peer support
2 specialists.

3
4 **NEW SECTION. Section 8. Exemptions from licensure.** The license and certification requirements
5 of [sections 1 through 14] do not prohibit:

6 (1) a member of another profession from performing duties and services consistent with the
7 individual's licensure or certification or, in the case of a qualified member of another profession who is not
8 licensed or certified, from performing duties and services consistent with the person's training, as long as the
9 person does not represent by title that the person ~~is engaging in the practice of behavioral health~~ is licensed by
10 the board;

11 (2) an activity or service or use of an official title by a person employed by or acting as a volunteer
12 for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a
13 part of the duties of the office or position;

14 (3) an activity or service of an employee of a business establishment performed solely for the
15 benefit of the establishment's employees; or

16 (4) an activity or service of a student, intern, or resident in behavioral health counseling pursuing a
17 course of study at an accredited university or college or working in a generally recognized training program if
18 the activity or service constitutes a part of a supervised course of study.

19
20 **NEW SECTION. Section 9. Candidates for licensure or certification.** (1) A person who has
21 completed the education requirements of [section 10, 11, 12, or 13] but who has not completed the supervised
22 work experience may apply for licensure as a candidate.

23 (2) A candidate shall submit a training and supervision plan.

24 (3) On completion of the supervised work experience, the candidate may apply to take any
25 approved examination for the licensure level the individual seeks to practice.

26 (4) The board shall limit the number of years a person may be licensed as a candidate under this
27 section.

28 (5) On passage of an approved examination, the candidate must apply for licensure in order to

1 continue to practice.

2

3 **NEW SECTION. Section 10. Social work license required -- qualifications.** (1) A person may not
4 practice social work unless licensed under Title 37, chapter 1, and [sections 1 through 14].

5 (2) Except as provided in subsection (6), an applicant for a clinical social work license must have:

6 (a) completed a master's or doctoral degree in social work from an approved program;

7 (b) successfully completed 3,000 hours of supervised social work practice; and

8 (c) passed an approved examination.

9 (3) An applicant for a master's social work license must have:

10 (a) completed a master's degree in an approved program;

11 (b) successfully completed ~~2,000~~ hours of supervised social work practice as determined by board

12 rule; and

13 (c) passed an approved examination.

14 (4) An applicant for a baccalaureate social work license must have:

15 (a) completed a bachelor's degree in social work from an approved program;

16 (b) successfully completed ~~2,000~~ hours of supervised social work practice as determined by board

17 rule; and

18 (c) passed an approved examination.

19 (5) A clinical social work licensee may engage in the independent practice of social work as

20 defined in board rule.

21 (6) An applicant for a clinical social work license who has not completed the degree requirements
22 of subsection (2)(a) may be licensed if the applicant meets requirements established by the board by rule for
23 additional postdegree social work experience equivalent to the provisions of subsections (2)(a) and (2)(b).

24 (7) The supervised social work practice required by this section must be completed as provided in
25 [section 9] and as prescribed by the board by rule.

26

27 **NEW SECTION. Section 11. Clinical professional counseling license required -- qualifications.**

28 (1) A person may not practice clinical professional counseling unless licensed under Title 37, chapter 1, and

1 [section 9] and as prescribed by the board by rule.

2

3 **NEW SECTION. Section 14. Peer support specialist license required -- qualifications.** (1) A

4 person may not practice peer support unless licensed under Title 37, chapter 1, and [sections 1 through 14].

5 (2) An applicant for licensure as a peer support specialist must:

6 (a) have a diagnosis from a mental health professional as having a behavioral health disorder;

7 (b) have received treatment for the diagnosed behavioral health disorder;

8 (c) be in recovery, as defined by board rule, from the behavioral health disorder; and

9 (d) have successfully completed an approved program in behavioral peer support, including an

10 ethics portion, as defined by board rule. The board shall:

11 (i) provide a list of approved programs; and

12 (ii) approve content that is flexible, affordable, and inclusive of faith-based, cultural, and

13 educational programs available from national, regional, and state agencies and organizations.

14

15 **Section 15.** Section 20-4-502, MCA, is amended to read:

16 **"20-4-502. Definitions.** For purposes of this part, unless the context requires otherwise, the following
17 definitions apply:

18 (1) "Critical quality educator shortage area" means a specific licensure or endorsement area in an
19 impacted school in which:

20 (a) in any of the 3 immediate preceding school fiscal years a position was:

21 (i) filled through the procedures set forth in 19-20-732, 20-4-106(1)(e), or 20-4-111;

22 (ii) filled from a candidate pool of less than five qualified candidates; or

23 (iii) advertised and remained vacant and unfilled due to a lack of qualified candidates for a period
24 in excess of 30 days; or

25 (b) a vacancy for the current school year was advertised for a period of at least 30 days and the
26 district received less than five applications from qualified candidates.

27 (2) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-
28 451.

1 (3) "Educational loans" means all loans made pursuant to a federal loan program, except federal
2 parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

3 (4) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20
4 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

5 (5) "Impacted school" means:

6 (a) a special education cooperative;

7 (b) the Montana school for the deaf and blind, as described in 20-8-101;

8 (c) the Montana youth challenge program, as established in 10-1-1401;

9 (d) a correctional facility, as defined in 41-5-103;

10 (e) a public school located on an Indian reservation; and

11 (f) a public school that, driving at a reasonable speed for the road surface, is located more than 20
12 minutes from a Montana city with a population greater than 15,000 based on the most recent federal decennial
13 census.

14 (6) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent
15 of public instruction for accreditation purposes in the current school year, who:

16 (i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in
17 subsection (6)(b) in a position that requires an educator license in accordance with administrative rules adopted
18 by the board of public education; or

19 (ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, ~~37-22-~~
20 ~~301, 37-23-201, 37-24-301, or 37-25-302, [section 10], or [section 11], or [section 13]~~ and is employed by an
21 entity listed in subsection (6)(b) of this section to provide services to students.

22 (b) For purposes of subsection (6)(a), an entity means:

23 (i) a school district;

24 (ii) an education cooperative;

25 (iii) the Montana school for the deaf and blind, as described in 20-8-101;

26 (iv) the Montana youth challenge program; and

27 (v) a correctional facility, as defined in 41-5-103.

28 (7) "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

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Section 16. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101;
- (iv) correctional facilities, as defined in 41-5-103; and
- (v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills correctional facility and the facility under contract with the department of corrections for female youth must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education;

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, ~~37-22-301, 37-23-201, 37-24-301, or 37-25-302~~, [section 10], ~~or [section 11]~~, or [section 13]; and

(ii) is employed by an entity listed in subsection (1) to provide services to students; or

- 1 (c) (i) holds an American Indian language and culture specialist license; and
- 2 (ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian
- 3 language immersion program pursuant to Title 20, chapter 7, part 14."

4

5 **Section 17.** Section 27-1-1101, MCA, is amended to read:

6 **"27-1-1101. Definition.** As used in this part, "mental health professional" means:

- 7 (1) a certified professional person as defined in 53-21-106;
- 8 (2) a physician licensed under Title 37, chapter 3;
- 9 (3) a professional counselor licensed under Title 37, ~~chapter 23~~ [sections 1 through 14];
- 10 (4) a psychologist licensed under Title 37, chapter 17;
- 11 (5) a clinical social worker licensed under Title 37, ~~chapter 22~~ [sections 1 through 14]; ~~or~~
- 12 (6) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

13 psychiatric mental health nursing; or

14 (7) a marriage and family therapist licensed under Title 37, [sections 1 through 14]."

15

16 **Section 18.** Section 33-30-1019, MCA, is amended to read:

17 **"33-30-1019. Coverage for services provided under freedom of choice for auxiliary health**

18 **services.** A health service corporation shall provide, in group and individual insurance contracts or certificates,

19 coverage for health services provided by a speech-language pathologist or audiologist licensed pursuant to

20 Title 37, chapter 15, or an addiction counselor licensed under Title 37, ~~chapter 35~~ [sections 1 through 14], if the

21 health care services that speech-language pathologists, audiologists, or addiction counselors are licensed to

22 perform are covered by the contracts or certificates."

23

24 **Section 19.** Section 33-30-1020, MCA, is amended to read:

25 **"33-30-1020. Coverage for services provided under freedom of choice for mental health**

26 **services.** A health service corporation shall provide, in group and individual insurance contracts, coverage for

27 health services provided by marriage and family therapists licensed under Title 37, ~~chapter 37~~ [sections 1

28 through 14], if the health care services that marriage and family therapists are licensed to perform are covered

1 (2) "Chemical dependency treatment" means required counseling and treatment related to
2 chemical dependency issues.

3 (3) "Counseling" means clinical professional counseling as defined in ~~37-23-102~~ section 2 and
4 includes group counseling for the purposes of 45-5-231 through 45-5-234.

5 (4) "Investigative criminal justice report" means the investigative report prepared by a law
6 enforcement agency associated with an offender's arrest for an assault on a partner or family member,
7 excluding any confidential information relating to the victim's location and confidential information not related to
8 the offense.

9 (5) "Offender" means a person convicted of an assault on a partner or family member.

10 (6) "Offender intervention program" means the combination of counseling and other services that
11 is organized in a judicial district to provide a preliminary assessment for counseling and other services that are
12 required for an offender.

13 (7) "Preliminary assessment for counseling" means the counseling assessment completed by a
14 counselor to determine an offender's need for counseling, attendance at psychoeducational groups, and
15 referrals for other treatment. This assessment must be completed either before or within 4 weeks after
16 counseling and psychoeducational groups are started.

17 (8) "Psychoeducational group" means a group discussion, with instructional content themes, that
18 encourages sharing and feedback, increases self-awareness, and is aimed at facilitating change in group
19 members' daily lives.

20 (9) "Recreational intoxicant" means a substance, drug, or other chemical that was taken for the
21 purpose of causing a person to be in a different emotional or psychological state and was not taken for a
22 medically recognized therapeutic purpose.

23 (10) "Victim" means a person against whom the offender committed an assault."
24

25 **Section 24.** Section 45-5-501, MCA, is amended to read:

26 **"45-5-501. Definitions.** (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term "consent"
27 means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact
28 and is further defined but not limited by the following:

1 (i) an expression of lack of consent through words or conduct means there is no consent or that
2 consent has been withdrawn;

3 (ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of
4 the person involved with the accused in the conduct at issue does not constitute consent; and

5 (iii) lack of consent may be inferred based on all of the surrounding circumstances and must be
6 considered in determining whether a person gave consent.

7 (b) Subject to subsections (1)(c) through (1)(g), the victim is incapable of consent because the
8 victim is:

9 (i) mentally disordered or incapacitated;

10 (ii) physically helpless;

11 (iii) overcome by deception, coercion, or surprise;

12 (iv) less than 16 years old;

13 (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on
14 probation, conditional release, or parole and the perpetrator is an employee, contractor, or volunteer of the
15 supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a
16 lawful search;

17 (vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

18 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim;

19 and

20 (B) is an employee, contractor, or volunteer of the youth care facility;

21 (vii) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based
22 facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based
23 services, as defined in 53-20-102, and the perpetrator:

24 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim;

25 and

26 (B) is an employee, contractor, or volunteer of the facility or community-based service;

27 (viii) a program participant, as defined in 52-2-802, in a private alternative adolescent residential or
28 outdoor program, pursuant to Title 52, chapter 2, part 8, and the perpetrator is a person associated with the

1 program, as defined in 52-2-802;

2 (ix) the victim is a client receiving psychotherapy services and the perpetrator:

3 (A) is providing or purporting to provide psychotherapy services to the victim; or

4 (B) is an employee, contractor, or volunteer of a facility that provides or purports to provide
5 psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the
6 victim;

7 (x) a student of an elementary, middle, junior high, or high school, whether public or nonpublic,
8 and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee,
9 contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other
10 authority over the student in a school setting;

11 (xi) a witness in a criminal investigation or a person who is under investigation in a criminal matter
12 and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or
13 is being investigated; or

14 (xii) a parent or guardian involved in a child abuse or neglect proceeding under Title 41, chapter 3,
15 and the perpetrator is:

16 (A) employed by the department of public health and human services for the purposes of carrying
17 out the department's duties under Title 41, chapter 3; and

18 (B) directly involved in the parent or guardian's case or involved in the supervision of the case.

19 (c) Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the
20 individuals involved is on probation, conditional release, or parole and the other individual is a probation or
21 parole officer of a supervising authority.

22 (d) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other
23 and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based
24 services, or is receiving services from a youth care facility and the other individual is an employee, contractor,
25 or volunteer of the facility or community-based service.

26 (e) Subsection (1)(b)(viii) does not apply if the individuals are married to each other and one of the
27 individuals involved is a program participant and the other individual is a person associated with the program.

28 (f) Subsection (1)(b)(ix) does not apply if the individuals are married to each other and one of the

1 individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee,
2 contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.

3 (g) Subsection (1)(b)(x) does not apply if the individuals are married to each other.

4 (2) As used in 45-5-508, the term "force" means:

5 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
6 forcible felony by the offender; or

7 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
8 offender has the ability to execute the threat.

9 (3) As used in 45-5-502 and this section, the following definitions apply:

10 (a) "Conditional release", in the case of a youth offender, has the meaning provided in 41-5-103.

11 (b) "Parole", in the case of an adult offender, has the meaning provided in 46-1-202.

12 (c) "Probation" means:

13 (i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a
14 crime and subject to the supervision of a supervising authority; and

15 (ii) in the case of a youth offender, supervision of the youth by a youth court pursuant to Title 41,
16 chapter 5.

17 (d) (i) "Psychotherapy services" means treatment, diagnosis, or counseling in a professional
18 relationship to assist individuals or groups to alleviate behavioral or mental health disorders, understand
19 unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify
20 behaviors that interfere with effective emotional, social, or intellectual functioning regardless of whether the
21 individual providing the psychotherapy services is licensed or unlicensed.

22 (ii) The term does not include a partner surrogate working with a clinical social worker, ~~a~~
23 ~~professional counselor, or a licensed clinical professional counselor,~~ or a marriage and family therapist as those
24 professionals are licensed in Title 37, ~~chapter 22 or 23~~ sections 1 through 14.

25 (e) "Supervising authority" includes a court, including a youth court, a county, or the department of
26 corrections."

27

28 **Section 25.** Section 45-5-601, MCA, is amended to read:

1 **"45-5-601. Prostitution -- patronizing prostitute -- exception.** (1) Except as provided in subsection
2 (2)(a), the offense of prostitution is committed if a person engages in or agrees or offers to engage in sexual
3 intercourse or sexual contact that is direct and not through clothing with another person for compensation,
4 whether the compensation is received or to be received or paid or to be paid.

5 (2) (a) A prostitute may be convicted of prostitution only if the prostitute engages in or agrees or
6 offers to engage in sexual intercourse with another person for compensation, whether the compensation is
7 received or to be received or paid or to be paid. A prostitute who is convicted of prostitution may be fined an
8 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

9 (b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or
10 offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another
11 person for compensation, whether the compensation is received or to be received or paid or to be paid. Except
12 as provided in subsections (3) and (4), a patron who is convicted of prostitution shall for the first offense be
13 fined an amount not to exceed \$1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a
14 second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not
15 to exceed 5 years, or both.

16 (3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time
17 of the offense, whether or not the patron was aware of the child's age, the patron offender:

18 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
19 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
20 subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender
21 is not eligible for parole.

22 (ii) may be fined an amount not to exceed \$50,000; and

23 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive
24 and behavioral phase of a sexual offender treatment program provided or approved by the department of
25 corrections.

26 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
27 subject to supervision by the department of corrections for the remainder of the offender's life and shall
28 participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

1 (4) If the person patronized was a victim of human trafficking, as defined in 45-5-701, or was
2 subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense
3 occurred, and the patron offender was 18 years of age or older at the time of the offense and knew or
4 reasonably should have known that the person patronized was a victim of human trafficking or was subjected to
5 force, fraud, or coercion, the patron offender:

6 (a) shall be punished by imprisonment in a state prison for a term of up to 10 years; and

7 (b) may be fined an amount not to exceed \$25,000.

8 (5) It is not a violation of 45-5-602, 45-5-603, or this section for a person with an impaired physical
9 ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate
10 who is working under the supervision of a clinical social worker, professional counselor, marriage and family
11 therapist, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23 [sections 1
12 through 14]."

13

14 **Section 26.** Section 45-5-709, MCA, is amended to read:

15 **"45-5-709. Immunity of child -- sex therapy participants.** (1) A person is not criminally liable or
16 subject to proceedings under Title 41, chapter 5, for prostitution, promoting prostitution, or other nonviolent
17 offenses if the person was a child at the time of the offense and committed the offense as a direct result of
18 being a victim of human trafficking.

19 (2) A person who has engaged in commercial sexual activity is not criminally liable or subject to
20 proceedings under Title 41, chapter 5, for prostitution if the person was a child at the time of the offense.

21 (3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under
22 Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3, and is entitled to
23 specialized services and care, which may include access to protective shelter, food, clothing, medical care,
24 counseling, and crisis intervention services, if appropriate.

25 (4) Subsections (1) through (3) do not apply in a prosecution under 45-5-601 or a proceeding
26 under Title 41, chapter 5, for patronizing a prostitute.

27 (5) It is not a violation of this part for a person with an impaired physical ability, physical
28 dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working

1 under the supervision of a clinical social worker, ~~professional counselor,~~ marriage and family therapist, or
2 ~~licensed-clinical professional counselor licensed under Title 37, chapter 22 or 23 [sections 1 through 14]."~~

3

4 **Section 27.** Section 53-6-101, MCA, is amended to read:

5 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana
6 medicaid program established for the purpose of providing necessary medical services to eligible persons who
7 have need for medical assistance. The Montana medicaid program is a joint federal-state program administered
8 under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The
9 department shall administer the Montana medicaid program.

10 (2) The department and the legislature shall consider the following funding principles when
11 considering changes in medicaid policy that either increase or reduce services:

12 (a) protecting those persons who are most vulnerable and most in need, as defined by a
13 combination of economic, social, and medical circumstances;

14 (b) giving preference to the elimination or restoration of an entire medicaid program or service,
15 rather than sacrifice or augment the quality of care for several programs or services through dilution of funding;
16 and

17 (c) giving priority to services that employ the science of prevention to reduce disability and illness,
18 services that treat life-threatening conditions, and services that support independent or assisted living, including
19 pain management, to reduce the need for acute inpatient or residential care.

20 (3) Medical assistance provided by the Montana medicaid program includes the following services:

21 (a) inpatient hospital services;

22 (b) outpatient hospital services;

23 (c) other laboratory and x-ray services, including minimum mammography examination as defined
24 in 33-22-132;

25 (d) skilled nursing services in long-term care facilities;

26 (e) physicians' services;

27 (f) nurse specialist services;

28 (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of

- 1 age, in accordance with federal regulations and subsection (10)(b);
- 2 (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as
- 3 provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- 4 (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk
- 5 pregnant women;
- 6 (j) services that are provided by physician assistants within the scope of their practice and that are
- 7 otherwise directly reimbursed as allowed under department rule to an existing provider;
- 8 (k) health services provided under a physician's orders by a public health department;
- 9 (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);
- 10 (m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as
- 11 provided in 33-22-153;
- 12 (n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103; and
- 13 (o) services provided by a person certified in accordance with 37-2-318 to provide services in
- 14 accordance with the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.
- 15 (4) Medical assistance provided by the Montana medicaid program may, as provided by
- 16 department rule, also include the following services:
- 17 (a) medical care or any other type of remedial care recognized under state law, furnished by
- 18 licensed practitioners within the scope of their practice as defined by state law;
- 19 (b) home health care services;
- 20 (c) private-duty nursing services;
- 21 (d) dental services;
- 22 (e) physical therapy services;
- 23 (f) mental health center services administered and funded under a state mental health program
- 24 authorized under Title 53, chapter 21, part 10;
- 25 (g) clinical social worker services;
- 26 (h) prescribed drugs, dentures, and prosthetic devices;
- 27 (i) prescribed eyeglasses;
- 28 (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

Amendment - 1st Reading-white - Requested by: Greg Oblander - (H) Business and Labor

- 2023

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Drafter: Jameson Walker, 406-444-3722

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- 1 (k) inpatient psychiatric hospital services for persons under 21 years of age;
- 2 (l) services of clinical professional counselors licensed under Title 37, ~~chapter 23~~ [sections 1
- 3 through 14];
- 4 ~~(m)~~ services of a marriage and family therapist licensed under Title 37, [sections 1 through 14];
- 5 ~~(n)~~ hospice care, as defined in 42 U.S.C. 1396d(o);
- 6 ~~(o)~~ case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including
- 7 targeted case management services for the mentally ill;
- 8 ~~(p)~~ services of psychologists licensed under Title 37, chapter 17;
- 9 ~~(q)~~ inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C.
- 10 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;
- 11 ~~(r)~~ services of behavioral health peer support specialists certified under Title 37, ~~chapter 38~~
- 12 [sections 1 through 14], provided to adults 18 years of age and older with a diagnosis of a mental disorder, as
- 13 defined in 53-21-102; and
- 14 ~~(s)~~ any additional medical service or aid allowable under or provided by the federal Social Security
- 15 Act.
- 16 (5) Services for persons qualifying for medicaid under the medically needy category of assistance,
- 17 as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others
- 18 qualifying for assistance under the Montana medicaid program. The department is not required to provide all of
- 19 the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy
- 20 category of assistance.
- 21 (6) In accordance with federal law or waivers of federal law that are granted by the secretary of the
- 22 U.S. department of health and human services, the department may implement limited medicaid benefits, to be
- 23 known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as
- 24 defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of
- 25 medical assistance only who are covered under a group related to a program providing cash assistance, as
- 26 defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may
- 27 include those optional services listed in subsections (4)(a) through ~~(4)(f)(4)(s)~~ that the department in its
- 28 discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds

1 appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the
2 provision of a particular service is commonly covered by private health insurance plans. However, a recipient
3 who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et
4 seq., or is less than 21 years of age is entitled to full medicaid coverage.

5 (7) The department may implement, as provided for in Title XIX of the Social Security Act, 42
6 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums,
7 deductibles, and coinsurance for persons not otherwise eligible for medicaid.

8 (8) (a) The department may set rates for medical and other services provided to recipients of
9 medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

10 (b) The department shall strive to close gaps in services provided to individuals suffering from
11 mental illness and co-occurring disorders by doing the following:

12 (i) simplifying administrative rules, payment methods, and contracting processes for providing
13 services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be
14 cost-neutral for the biennium beginning July 1, 2017.

15 (ii) publishing a report on an annual basis that describes the process that a mental health center or
16 chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment
17 from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

18 (9) The services provided under this part may be only those that are medically necessary and that
19 are the most efficient and cost-effective.

20 (10) (a) The amount, scope, and duration of services provided under this part must be determined
21 by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be
22 amended.

23 (b) The department shall, with reasonable promptness, provide access to all medically necessary
24 services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access
25 to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

26 (11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

27 (12) (a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan,
28 the department of public health and human services shall report this information to the following committees:

1 (i) the children, families, health, and human services interim committee;

2 (ii) the legislative finance committee; and

3 (iii) the health and human services budget committee.

4 (b) In its report to the committees, the department shall provide an explanation for the proposed
5 changes and an estimated budget impact to the department over the next 4 fiscal years.

6 (13) If available funds are not sufficient to provide medical assistance for all eligible persons, the
7 department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical
8 services made available under the Montana medicaid program after taking into consideration the funding
9 principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L.
10 2019.)"

11

12 **Section 28.** Section 53-21-102, MCA, is amended to read:

13 **"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

14 (1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal
15 mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a
16 mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving
17 treatment in a mental health facility.

18 (2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or
19 less licensed by the department that is capable of providing secure, inpatient psychiatric services, including
20 services to persons with mental illness and co-occurring chemical dependency.

21 (3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
22 created by 2-15-211.

23 (4) "Commitment" means an order by a court requiring an individual to receive treatment for a
24 mental disorder.

25 (5) "Court" means any district court of the state of Montana.

26 (6) "Department" means the department of public health and human services provided for in 2-15-
27 2201.

28 (7) "Emergency situation" means:

1 (a) a situation in which any person is in imminent danger of death or bodily harm from the activity
2 of a person who appears to be suffering from a mental disorder and appears to require commitment; or

3 (b) a situation in which any person who appears to be suffering from a mental disorder and
4 appears to require commitment is substantially unable to provide for the person's own basic needs of food,
5 clothing, shelter, health, or safety.

6 (8) "Friend of respondent" means any person willing and able to assist a person suffering from a
7 mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and
8 requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

9 (9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial
10 adverse effects on an individual's cognitive or volitional functions.

11 (b) The term does not include:

12 (i) addiction to drugs or alcohol;

13 (ii) drug or alcohol intoxication;

14 (iii) intellectual disability; or

15 (iv) epilepsy.

16 (c) A mental disorder may co-occur with addiction or chemical dependency.

17 (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing
18 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
19 facility, or a residential treatment center licensed or certified by the department that provides treatment to
20 children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility
21 within the meaning of this part.

22 (11) "Mental health professional" means:

23 (a) a certified professional person;

24 (b) a physician licensed under Title 37, chapter 3;

25 (c) a clinical professional counselor licensed under Title 37, ~~chapter 23~~ [sections 1 through 14];

26 (d) a psychologist licensed under Title 37, chapter 17;

27 (e) a clinical social worker licensed under Title 37, ~~chapter 22~~ [sections 1 through 14];

28 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

1 psychiatric mental health nursing; ~~or~~

2 (g) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric

3 mental health; or

4 (h) a marriage and family therapist licensed under Title 37, [sections 1 through 14].

5 (12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person

6 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory

7 responsibilities to protect patients from abuse and neglect.

8 (b) The term includes but is not limited to:

9 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

10 (ii) failure to follow a prescribed plan of care and treatment; or

11 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or

12 intention.

13 (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers

14 and sisters of a person.

15 (14) "Patient" means a person committed by the court for treatment for any period of time or who is

16 voluntarily admitted for treatment for any period of time.

17 (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

18 (16) "Professional person" means:

19 (a) a medical doctor;

20 (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

21 psychiatric mental health nursing;

22 (c) a licensed psychologist;

23 (d) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric

24 mental health; or

25 (e) a person who has been certified, as provided for in 53-21-106, by the department.

26 (17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a

27 professional person.

28 (18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering

1 from a mental disorder and requiring commitment.

2 (19) "State hospital" means the Montana state hospital."

3

4 **Section 29.** Section 53-21-1202, MCA, is amended to read:

5 **"53-21-1202. Crisis intervention programs -- rulemaking authority.** (1) The department shall,
6 subject to available appropriations for the purposes of this part, establish crisis intervention programs. The
7 programs must be designed to provide 24-hour emergency admission and care of persons suffering from a
8 mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative
9 to placement in jail.

10 (2) The department shall provide information and technical assistance regarding needed services
11 and assist counties and federally recognized tribal governments in developing plans for crisis intervention
12 services and for the provision of alternatives to jail placement.

13 (3) The department may provide crisis intervention programs as:

14 (a) a rehabilitative service under 53-6-101(4)(j); and

15 (b) a targeted case management service authorized in 53-6-101~~(4)(n)~~(4)(o).

16 (4) The department shall adopt rules to:

17 (a) implement the grant program provided for in 53-21-1203;

18 (b) contract for detention beds pursuant to 53-21-1204; and

19 (c) pay for short-term inpatient treatment that is provided pursuant to 53-21-1205."

20

21 **NEW SECTION. Section 30. Repealer.** The following sections of the Montana Code Annotated are
22 repealed:

23 37-22-101. Purpose.

24 37-22-102. Definitions.

25 37-22-103. Levels of social worker licensure.

26 37-22-201. Duties of board.

27 37-22-301. Licensed clinical social worker requirements -- rulemaking -- exemptions.

28 37-22-302. Fees.