

1 HOUSE BILL NO. 313

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9

10 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INDEPENDENT PRACTICE OF PHYSICIAN

11 ASSISTANTS; CLARIFYING COVERAGE OF PHYSICIAN ASSISTANTS UNDER HEALTHY MONTANA

12 KIDS, HEALTH MAINTENANCE ORGANIZATIONS, AND MULTIPLE WELFARE EMPLOYER

13 ARRANGEMENTS; AMENDING SECTIONS 33-22-114, 33-31-111, 33-35-306, ~~37-20-101~~, 37-20-104, ~~37-20-~~

14 ~~203~~, 37-20-301, 37-20-401, 37-20-403, 37-20-404, 37-20-405, 37-20-410, 37-20-411, 50-5-1301, 50-12-102,

15 50-19-403, 50-20-109, AND 53-4-1005, MCA; ~~REPEALING SECTION 37-20-101, MCA~~; AND PROVIDING AN

16 IMMEDIATE EFFECTIVE DATE."

17

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

19

20 **Section 1.** Section 33-22-114, MCA, is amended to read:

21 **"33-22-114. Coverage required for services provided by physician assistants, advanced**

22 **practice registered nurses, and registered nurse first assistants.** An insurer, a health service corporation,

23 or any employee health and welfare fund that provides accident or health insurance benefits to residents of this

24 state shall provide, in group and individual insurance contracts, coverage as well as payment or reimbursement

25 for health services provided by:

26 (1) a physician assistant as normally covered by contracts for services supplied by a physician if

27 health care services that the physician assistant ~~is approved to perform~~ performs are covered by the contract;

28 (2) an advanced practice registered nurse, defined in 37-8-102, as normally covered by contracts

1 for services supplied by a physician or a physician assistant if health care services that the advanced practice
2 registered nurse is approved to perform are covered by the contract; and

3 (3) a registered nurse first assistant, licensed under Title 37, chapter 8, as normally covered by
4 contracts for surgical services supplied by a physician, a physician assistant, or an advanced practice
5 registered nurse if surgical services that the registered nurse first assistant is approved to perform are covered
6 by the contract."

7

8 **Section 2.** Section 33-31-111, MCA, is amended to read:

9 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise
10 provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance
11 organization authorized to transact business under this chapter. This provision does not apply to an insurer or
12 health service corporation licensed and regulated pursuant to the insurance or health service corporation laws
13 of this state except with respect to its health maintenance organization activities authorized and regulated
14 pursuant to this chapter.

15 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority
16 or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

17 (3) A health maintenance organization authorized under this chapter is not practicing medicine and
18 is exempt from Title 37, chapter 3, relating to the practice of medicine.

19 (4) This chapter does not exempt a health maintenance organization from the applicable certificate
20 of need requirements under Title 50, chapter 5, parts 1 and 3.

21 (5) This section does not exempt a health maintenance organization from the prohibition of
22 pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through
23 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and
24 33-3-701 through 33-3-704.

25 (6) This section does not exempt a health maintenance organization from:

26 (a) prohibitions against interference with certain communications as provided under Title 33,
27 chapter 1, part 8;

28 (b) the provisions of Title 33, chapter 22, parts 7 and 19;

- 1 (c) the requirements of 33-22-134 and 33-22-135;
- 2 (d) network adequacy and quality assurance requirements provided under chapter 36; or
- 3 (e) the requirements of Title 33, chapter 18, part 9.
- 4 (7) Other chapters and provisions of this title apply to health maintenance organizations as follows:
5 Title 33, chapter 1, parts 6, 12, and 13; 33-2-1114; 33-2-1211 and 33-2-1212; Title 33, chapter 2, parts 13, 19,
6 23, and 24; 33-3-401; 33-3-422; 33-3-431; Title 33, chapter 3, part 6; Title 33, chapter 10; Title 33, chapter 12;
7 33-15-308; Title 33, chapter 17; Title 33, chapter 19; 33-22-107; 33-22-114; 33-22-128; 33-22-129; 33-22-131;
8 33-22-136 through 33-22-139; 33-22-141 and 33-22-142; 33-22-152 and 33-22-153; 33-22-156 through 33-22-
9 159; 33-22-180; 33-22-244; 33-22-246 and 33-22-247; 33-22-514 and 33-22-515; 33-22-521; 33-22-523 and
10 33-22-524; 33-22-526; and Title 33, chapter 32."

11
12 **Section 3.** Section 33-35-306, MCA, is amended to read:

13 **"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-
14 funded multiple employer welfare arrangements are subject to the following provisions:

- 15 (a) 33-1-111;
- 16 (b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare
17 arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;
- 18 (c) Title 33, chapter 1, part 7;
- 19 (d) Title 33, chapter 2, parts 23 and 24;
- 20 (e) 33-3-308;
- 21 (f) Title 33, chapter 7;
- 22 (g) Title 33, chapter 18, except 33-18-242;
- 23 (h) Title 33, chapter 19;
- 24 (i) 33-22-107, 33-22-114, 33-22-128, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139,
25 33-22-141, 33-22-142, 33-22-152, and 33-22-153;
- 26 (j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;
- 27 (k) Title 33, chapter 22, part 7; and
- 28 (l) 33-22-707.

1 (2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded
2 multiple employer welfare arrangement that has been issued a certificate of authority that has not been
3 revoked."
4

5 **Section 4.** Section 37-20-101, MCA, is amended to read:

6 ~~"37-20-101. Qualifications of supervising physician and physician assistant. (1) The supervising
7 physician named in the supervision agreement required by 37-20-301 shall:~~

8 ~~(a) possess a current, active license to practice medicine in this state; and~~

9 ~~(b) exercise supervision over the physician assistant in accordance with the rules adopted by the
10 board and retain professional and legal responsibility for the care and treatment of patients by the physician
11 assistant.~~

12 ~~(2) A physician assistant named in the supervision agreement required by 37-20-301 must have a
13 current, active Montana physician assistant license."~~

14
15 **Section 4.** Section 37-20-104, MCA, is amended to read:

16 **"37-20-104. Unlicensed practice -- penalties.** (1) A person who employs a physician assistant or
17 holds out to the public that the person is a physician assistant without having been issued a Montana physician
18 assistant license is guilty of a misdemeanor and is punishable as provided in 46-18-212.

19 (2) Prior to being issued a license and submitting a supervision agreement to the board, a
20 physician assistant may not practice as a physician assistant in this state, even under the supervision of a
21 licensed physician.

22 (3) The board may enforce the provisions of this section by the remedy of injunction and the
23 application of other penalties as provided by law."
24

25 **Section 5.** Section 37-20-203, MCA, is amended to read:

26 **"37-20-203. Licensing of physician assistants.** (1) The board may issue either an active or inactive
27 license to a physician assistant applying for a license or license renewal in Montana.

28 (2) A physician assistant with fewer than 6,000 hours of postgraduate clinical experience shall

practice medicine with a collaborative agreement between the physician assistant and one or more
collaborating providers, who may be:

(a) a licensed physician; or

(b) a licensed physician assistant with 8,000 or more hours of postgraduate clinical experience.

(3) "Collaborative agreement" as used in this section means the interaction and relationship that a
physician assistant has with a collaborating provider as described in subsection (2), in which:

(a) the physician assistant and collaborating provider are cognizant of the physician assistant's
qualifications and limitations in caring for patients:

(b) the physician assistant consults with the collaborating provider while remaining responsible for
care provided by the physician assistant; and

(c) the collaborating provider gives direction and guidance to the physician assistant.

(4) A physician assistant with a collaborative agreement per subsection (2) shall:

(a) practice under written policies and procedures established at a practice level that:

(i) describe how collaboration will occur in accordance with subsection (2); and

(ii) describe methods for evaluating the physician assistant's competency, knowledge, and skills;
and

(b) provide a copy of the written policies and procedures and documentation of compliance under
this subsection (4) to the board upon the board's request.

(5) A licensed physician assistant actively practicing for 6,000 hours prior to October 1, 2023, is
exempt from the collaborative agreement requirement."

Section 6. Section 37-20-301, MCA, is amended to read:

"37-20-301. Requirements for use of physician assistant ~~practice--supervision agreement--~~
~~duties and delegation agreement-- content -- approval -- filing.~~ (1)A physician, office, firm, state institution,
or professional service corporation may not employ or make use of the services of a physician assistant in the
practice of medicine, as defined in 37-3-102, and as provided in this chapter and a physician assistant may not
be employed or practice as a physician assistant unless the physician assistant:

~~(a) is supervised by a physician licensed in this state;~~

1 (b)(1) is licensed by the board; ~~and~~

2 (c) ~~has submitted a physician assistant supervision agreement to the board on a form prescribed by~~
3 ~~the department; and~~

4 (d)(2) has paid to the board the applicable fees required by the board; and

5 (3) engages in practice for which the physician assistant is educationally prepared and for which
6 the physician assistant has achieved and maintained competency.

7 (2) ~~A supervising physician and the supervised physician assistant shall execute a duties and~~
8 ~~delegation agreement constituting a contract that defines the physician assistant's professional relationship with~~
9 ~~the supervising physician and the limitations on the physician assistant's practice under the supervision of the~~
10 ~~supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes~~
11 ~~in the duties of each party occurring over time. The board may by rule specify other requirements for the~~
12 ~~agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and~~
13 ~~delegation agreement with a supervising physician by October 1, 2006.~~

14 (3) ~~A physician assistant and the physician assistant's supervising physician shall keep the~~
15 ~~supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon~~
16 ~~request to a health care provider, a health care facility, a state or federal agency, the board, and any other~~
17 ~~individual who requests one."~~

18

19 **Section 7.** Section 37-20-401, MCA, is amended to read:

20 **"37-20-401. Definitions.** As used in this chapter, the following definitions apply:

21 (1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

22 (2) ~~"Duties and delegation agreement" means a written contract between the supervising physician~~
23 ~~and the physician assistant that meets the requirements of 37-20-301.~~

24 (3)(2) "Physician assistant" means ~~a member of a health care team, licensed by the board, an~~
25 individual licensed pursuant to this chapter who provides medical services that may include but are not limited
26 to examination, diagnosis, prescription of medications, and treatment ~~under the supervision of a physician~~
27 ~~licensed by the board.~~

28 (4) ~~"Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board~~

1 who agrees to a supervision agreement and a duties and delegation agreement.

2 (5) ~~"Supervision agreement" means a written agreement between a supervising physician and a~~
3 ~~physician assistant providing for the supervision of the physician assistant."~~

4

5 **Section 8.** Section 37-20-403, MCA, is amended to read:

6 **"37-20-403. Physician assistant as agent of supervising physician -- degree of supervision**
7 **required -- scope of practice.** (1) A physician assistant is considered the agent of the supervising physician
8 with regard to all duties delegated to the physician assistant and is professionally and legally responsible for the
9 care and treatment of a patient by a physician assistant licensed in accordance with this chapter. ~~A health care~~
10 ~~provider shall consider the instructions of a physician assistant as being the instructions of the supervising~~
11 ~~physician as long as the instructions concern the duties delegated to the physician assistant.~~

12 (2) ~~Onsite or direct supervision of a physician assistant by a supervising physician is not required if~~
13 ~~the supervising physician has provided a means of communication between the supervising physician and the~~
14 ~~physician assistant or an alternate means of supervision in the event of the supervising physician's absence.~~

15 (3)(2) ~~A physician assistant may~~ A physician assistant may:

16 (a) diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities,
17 either physical or mental, by any means, method, device, or instrumentality authorized by the supervising
18 physician;

19 (b) obtain informed consent;

20 (c) supervise, delegate, and assign therapeutic and diagnostic measures;

21 (d) certify the health or disability of a patient as required by any local, state, or federal program;

22 and

23 (e) authenticate any document that a physician may authenticate."

24

25 **Section 9.** Section 37-20-404, MCA, is amended to read:

26 **"37-20-404. Prescribing and dispensing authority -- discretion of supervising physician on**
27 **limitation of authority.** (1) A physician assistant may prescribe, dispense, and administer drugs ~~to the extent~~
28 ~~authorized by the supervising physician.~~

1 (2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging
2 and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

3 (3) The prescribing and dispensing authority ~~granted for~~ a physician assistant may include the
4 following:

5 (a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule
6 IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

7 (b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be
8 authorized for limited periods not to exceed 34 days.

9 (c) Records on the dispensing and administration of scheduled drugs must be kept.

10 (d) A physician assistant shall maintain registration with the federal drug enforcement
11 administration if the physician assistant is authorized ~~by the supervising physician~~ to prescribe controlled
12 substances.

13 (e) A prescription written by a physician assistant must comply with regulations relating to
14 prescription requirements adopted by the board of pharmacy."
15

16 **Section 10.** Section 37-20-405, MCA, is amended to read:

17 **"37-20-405. Billing.** ~~A supervising physician~~ physician assistant, medical office, firm, institution, or
18 other entity may bill for a service provided by a supervised physician assistant."
19

20 **Section 11.** Section 37-20-410, MCA, is amended to read:

21 **"37-20-410. Participation in disaster and emergency care -- liability of physician assistant ~~and~~**
22 **~~supervising physician.~~** (1) A physician assistant licensed in this state, licensed or authorized to practice in
23 another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal
24 employer who provides medical care in response to an emergency or a federal, state, or local disaster may
25 provide that care ~~either without supervision as required by this chapter or with whatever supervision is~~
26 ~~available. The provision of care allowed by this subsection is limited to~~ for the duration of the emergency or
27 disaster.
28

~~(2) A physician who supervises a physician assistant providing medical care in response to an~~

1 emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter
2 applicable to supervising physicians.

3 ~~(3)~~(2) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than
4 in the ordinary course of employment or practice renders emergency medical care during an emergency or
5 disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or
6 omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is
7 provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where
8 those services are normally provided.

9 ~~(4) A physician who supervises a physician assistant voluntarily and gratuitously providing emergency
10 care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury
11 resulting from an act or omission in supervising the physician assistant if the injury is caused by simple or
12 ordinary negligence on the part of the physician assistant providing the care or on the part of the supervising
13 physician."~~

14
15 **Section 12.** Section 37-20-411, MCA, is amended to read:

16 **"37-20-411. Unlawful acts.** A person who performs acts constituting the practice of medicine in this
17 state acts unlawfully if the person:

18 ~~(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing
19 requirement of this chapter; or~~

20 ~~(2) has received a license pursuant to this chapter but has not completed a duties and delegation
21 agreement or a supervision agreement."~~

22
23 **Section 13.** Section 50-5-1301, MCA, is amended to read:

24 **"50-5-1301. Definitions.** As used in this part, the following definitions apply:

25 (1) "Adult" means any person 18 years of age or older.

26 (2) "Advanced practice registered nurse" means an individual who is licensed under Title 37,
27 chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of
28 nursing pursuant to 37-8-202 and 37-8-409.

1 (3) "Attending health care provider" means the physician, advanced practice registered nurse, or
2 physician assistant, whether selected by or assigned to a patient, who has primary responsibility for the
3 treatment and care of the patient.

4 (4) "Decisional capacity" means the ability to provide informed consent to or refuse medical
5 treatment or the ability to make an informed health care decision as determined by a health care provider
6 experienced in this type of assessment.

7 (5) "Health care facility" means a hospital, critical access hospital, or facility providing skilled
8 nursing care as those terms are defined in 50-5-101.

9 (6) "Health care provider" means any individual licensed or certified by the state to provide health
10 care.

11 (7) "Interested person" means a patient's:

12 (a) spouse;

13 (b) parent;

14 (c) adult child, sibling, or grandchild; or

15 (d) close friend.

16 (8) "Medical proxy decisionmaker" means a physician or advanced practice registered nurse
17 designated by the attending health care provider.

18 (9) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

19 (10) "Physician assistant" means an individual licensed pursuant to Title 37, chapter 20, ~~whose~~
20 ~~duties and delegation agreement authorizes the individual to undertake the activities allowed under this part.~~

21 (11) (a) "Lay proxy decisionmaker" means an interested person selected pursuant to this part
22 authorized to make medical decisions and discharge and transfer dispositions for a patient who lacks decisional
23 capacity.

24 (b) The term does not include the patient's attending health care provider."
25

26 **Section 14.** Section 50-12-102, MCA, is amended to read:

27 **"50-12-102. Definitions.** As used in this part, the following definitions apply:

28 (1) "Eligible patient" means an individual who meets the requirements of 50-12-104.

1 (2) "Health care facility" has the meaning provided in 50-5-101.

2 (3) "Health care provider" means any of the following individuals licensed pursuant to Title 37:

3 (a) a physician;

4 (b) an advanced practice registered nurse authorized by the board of nursing to prescribe
5 medicine; and

6 (c) a physician assistant ~~whose duties and delegation agreement allows the physician assistant to~~
7 ~~undertake the activities allowed under this part.~~

8 (4) "Investigational drug, biological product, or device" means a drug, biological product, or device
9 that:

10 (a) has successfully completed phase 1 of a clinical trial but has not yet been approved for general
11 use by the United States food and drug administration; and

12 (b) remains under investigation in a United States food and drug administration-approved clinical
13 trial.

14 (5) "Terminal illness" means a progressive disease or medical or surgical condition that:

15 (a) entails significant functional impairment;

16 (b) is not considered by a treating health care provider to be reversible even with administration of
17 a treatment currently approved by the United States food and drug administration; and

18 (c) without life-sustaining procedures, will result in death.

19 (6) "Written informed consent" means a written document that meets the requirements of 50-12-
20 105."

21

22 **Section 15.** Section 50-19-403, MCA, is amended to read:

23 **"50-19-403. Local fetal, infant, child, and maternal mortality review team.** (1) A local fetal, infant,
24 child, and maternal mortality review team must be approved by the department of public health and human
25 services. Approval may be given if:

26 (a) the county health department, a tribal health department if the tribal government agrees, or
27 both are represented on the team and the plan provided for in subsection (1)(e) includes the roles of the county
28 health department, tribal health department, or both;

- 1 (b) a lead person has been designated for the purposes of management of the review team;
- 2 (c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team;
- 3 (d) a team reviewing a maternal death includes at least one obstetrician, one family practice
- 4 physician, or one physician assistant whose ~~duties and delegation agreement~~ experience includes obstetrical
- 5 care; and
- 6 (e) the team has developed a plan that includes, at a minimum, operating policies of the review
- 7 team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).
- 8 (2) If a local fetal, infant, child, and maternal mortality review team is established, the team must
- 9 be multidisciplinary and may include only:
- 10 (a) the county attorney or a designee;
- 11 (b) a law enforcement officer;
- 12 (c) the medical examiner or coroner for the jurisdiction;
- 13 (d) a physician;
- 14 (e) a school district representative;
- 15 (f) a representative of the local health department;
- 16 (g) a representative from a tribal health department, appointed by the tribal government;
- 17 (h) a representative from a neighboring county or tribal government if there is an agreement to
- 18 review deaths for that county or tribe;
- 19 (i) a representative of the department of public health and human services;
- 20 (j) a forensic pathologist;
- 21 (k) a pediatrician;
- 22 (l) a family practice physician;
- 23 (m) an obstetrician;
- 24 (n) a nurse practitioner;
- 25 (o) a public health nurse;
- 26 (p) a mental health professional;
- 27 (q) a local trauma coordinator;
- 28 (r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is

1 located within the county;

2 (s) a physician assistant; and

3 ~~(s)~~(t) representatives of the following:

4 (i) local emergency medical services;

5 (ii) a local hospital;

6 (iii) a local hospital medical records department;

7 (iv) a local governmental fire agency organized under Title 7, chapter 33; and

8 (v) the local registrar.

9 (3) The designated lead person for the team shall submit membership lists to the department of
10 public health and human services annually."

11

12 **Section 16.** Section 50-20-109, MCA, is amended to read:

13 **"50-20-109. Control of practice of abortion.** (1) Except as provided in 50-20-401, an abortion may
14 not be performed within the state of Montana:

15 (a) except by a licensed physician or physician assistant;

16 (b) on an unborn child capable of feeling pain, except as provided in 50-20-603.

17 ~~(2) The supervision agreement of a physician assistant may provide for performing abortions.~~

18 ~~(3)~~(2) Violation of subsection (1) is a felony."

19

20 **Section 17.** Section 53-4-1005, MCA, is amended to read:

21 **"53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program
22 may include but are not limited to:

23 (a) inpatient and outpatient hospital services;

24 (b) physician, physician assistant, and advanced practice registered nurse services;

25 (c) laboratory and x-ray services;

26 (d) well-child and well-baby services;

27 (e) immunizations;

28 (f) clinic services;

Amendment - 1st Reading-white - Requested by: Jodee Etchart - (H) Business and Labor

- 2023

68th Legislature 2023

Drafter: Milly Allen, 406-444-9280

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1 (g) dental services;

2 (h) prescription drugs;

3 (i) mental health and substance abuse treatment services;

4 (j) habilitative services as defined in 53-4-1103;

5 (k) hearing and vision exams; and

6 (l) eyeglasses.

7 (2) The program must comply with the provisions of 33-22-153.

8 (3) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover
9 significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not
10 exceed \$100,000 in state funds, plus any matched federal funds, each fiscal year.

11 (4) The department is specifically prohibited from providing payment for birth control
12 contraceptives under this program.

13 (5) The department shall notify enrollees of any restrictions on access to health care providers, of
14 any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-
15 state provider to be an eligible provider. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999;
16 sec. 3, Ch. 169, L. 2007; sec. 10, Ch. 97, L. 2013; sec. 5, Ch. 399, L. 2017.)"

17

18 **NEW SECTION. Section 18. Repealer.** The following section of the Montana Code Annotated is
19 repealed:

20 37-20-101. Qualifications of supervising physician and physician assistant.

21

22 **NEW SECTION. Section 19. Effective date.** [This act] is effective on passage and approval.

23

- END -