

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REVIEW PROCESS BY THE MEDICAL  
5 EXAMINERS BOARD TO MAKE RECOMMENDATIONS TO THE LEGISLATURE REGARDING NEW AND  
6 REVISED SCOPES OF PRACTICE RELATED TO HEALTH CARE; CREATING A REVIEW PROCESS OF  
7 ADMINISTRATIVE RULE PROPOSALS IMPACTING HEALTH CARE-RELATED SCOPES OF PRACTICE;  
8 PROVIDING A LIMITATION ON RULES FOR NEW OR REVISED HEALTH CARE-RELATED SCOPES OF  
9 PRACTICE; PROVIDING GUIDELINES FOR REVIEW; PROVIDING DEFINITIONS; AMENDING SECTIONS  
10 2-8-402, 2-8-403, AND 37-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
11

12 WHEREAS, the limitations of accessing health care in Montana's rural areas and the concentration of  
13 medical specialties in certain communities elevate the importance of teams of allied health professionals, which  
14 are more likely to work harmoniously together within well-defined roles to help improve the health and safety of  
15 Montana citizens; and

16 WHEREAS, health care professionals' scope of practice is often not clearly, specifically, or explicitly  
17 defined in statute, sometimes because legislators suggest that the parameters are better left to be set by  
18 knowledgeable practitioners; and

19 WHEREAS, overlapping scopes of practice arise and create confusion and sometimes legal  
20 repercussions when each professional licensing board sets the scope for its own profession without taking  
21 another profession's scope into consideration; and

22 WHEREAS, confusion with overlapping scopes of practice has resulted in disputes among health care  
23 professions, and resolution often requires in-depth understanding of technical details and specific knowledge;  
24 and

25 WHEREAS, legislators need balanced, thoroughly researched information for making the health care  
26 policy decisions involved in adopting or changing scopes of practice; and

27 WHEREAS, initial determinations about scopes of practice may be most efficiently and knowledgeably  
28 handled by the board of medical examiners.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Health Care Collaboration and Policy Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 5] is to provide the legislature with scientifically appropriate information from knowledgeable professionals prior to legislative enactment or licensing board adoption of new or revised changes to a health care-related scope of practice. [Sections 1 through 5] are also intended to enable collaborative discussions regarding health care-related scopes of practice using a patient-centered focus.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant group" means:

(a) a health professional group or organization, an individual, or any other interested party not identified under subsection (1)(b) that seeks to:

(i) establish a new or expanded health care-related scope of practice;

(ii) change the scope of practice of a regulated health profession; or

(iii) obtain an independent review of a proposed administrative rule that may change a health care-related scope of practice in a manner that impacts a health profession; or

(b) a health care licensing board or the department on behalf of a program that seeks an independent review of a proposed administrative rule if the rule may impact the scope of practice of a health profession.

(2) "Board" means the board of medical examiners provided for in 2-15-1731.

(3) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

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

(5) "Health profession" means a health-related activity or occupation in the healing arts for which a person must hold a license to practice.

1 (6) "Licensee" means a person who has a current license as defined in 37-1-130 from a licensing  
2 board or a licensing program under Title 37.

3 (7) "Scope of practice" means those activities that a person licensed to practice a profession or  
4 occupation is allowed to perform if prescribed by appropriate statutes or rules adopted by a licensing board or  
5 the department on behalf of a program.

6

7 **NEW SECTION. Section 4. Intent to change scope of practice for licensed health profession.**

8 (1) An applicant group seeking to change the scope of practice for a licensed health profession shall provide a  
9 letter of intent to the commissioner that addresses the criteria in subsection (3). The commissioner shall provide  
10 copies of the applicant group's bill draft or proposed rule request, letter of intent, and any other materials  
11 submitted by the applicant group to the board prior to its next scheduled public meeting.

12 (2) An applicant group shall provide notice of the request to the licensing board or boards that would  
13 be impacted under the bill draft or rule proposal and the legislative interim committee or committees responsible  
14 for oversight of the subject matter of the request.

15 (3) The letter of intent must not exceed 1,000 words and must contain the following information:

16 (a) a summary of the proposed scope of practice change for a health profession;

17 (b) the reason a new or revised scope of practice is necessary, including:

18 (i) the nature of the potential harm to the public if the scope of practice is not changed and the extent  
19 to which there is a threat to public health and safety; and

20 (ii) the extent to which consumers need or may benefit from practitioners having the new or revised  
21 scope of practice;

22 (c) the extent of autonomy a practitioner has, as indicated by the extent to which the profession or  
23 occupation calls for independent judgment, the extent of skill or experience required in making the independent  
24 judgment, and the extent to which practitioners are supervised;

25 (d) analysis of whether the incidence of relevant health care problems may be expected to be  
26 reduced or exacerbated by a change in the scope of practice;

27 (e) the overlap or shared scope of practice with another licensed profession or occupation;

28 (f) the degree, if any, to which the change would restrict entry into the profession or occupation for

1 reasons other than the public health, safety, welfare, or common good;

2 (g) the specialized skills or additional training required to engage in the new scope of practice,  
3 including continuing education requirements;

4 (h) information regarding whether other states allow licensees to engage in a scope of practice  
5 comparable to the proposed scope of practice and whether those other states have information regarding  
6 impacts of the change in scope of practice;

7 (i) a summary of previous efforts to change the scope of practice for the profession or occupation, if  
8 applicable; and

9 (j) information on whether third-party reimbursement is available for the new or expanded scope of  
10 practice.

11 (4) A letter of intent submitted pursuant to this section is a public record.

12

13 **NEW SECTION. Section 5. Board meeting -- factfinding -- recommendation.** (1) The board shall  
14 serve as a factfinding body when an applicant group requests to change a scope of practice for a licensed  
15 health profession.

16 (2) On receipt of the documents listed in [section 4(1)] from the commissioner, the board shall hold a  
17 meeting or meetings to consider the request, determine facts, and develop a recommendation for the  
18 commissioner.

19 (3) The board may request prior to, during, or after a meeting any additional information or testimony  
20 from technical experts that the board members consider necessary to make an informed recommendation.  
21 Board members shall consider available scientific evidence. The board shall organize at least one public  
22 factfinding hearing before the board makes a recommendation.

23 (4) (a) The board shall review the criteria in [section 4] and determine whether a need exists for the  
24 new or proposed change in a health profession scope of practice and whether potential benefits of the  
25 proposed change outweigh potential harm.

26 (b) Based on this review and after the public factfinding hearing, the board shall make a  
27 recommendation to the commissioner.

28 (c) A recommendation related to a proposed change in a health profession scope of practice must

1 include the board's findings, as well as:

2 (i) a report identifying all other states that authorize a scope of practice for the relevant profession that  
3 is identical or similar to the applicant group's proposed change, describing the scope of practice adopted in  
4 those states, and setting forth any available information on how the scope of practice has affected the quality  
5 and cost of health care in the state;

6 (ii) a review of any applicable statutory or regulatory changes that were required in the other state to  
7 implement changes for the identical or similar scope of practice;

8 (iii) an objective and balanced review that examines the extent to which the potential benefits predicted  
9 by proponents of the change or concerns raised by opponents of the change materialized after the scope of  
10 practice change took effect in the other state; and

11 (iv) evidence-based recommendations to the legislature for each proposed health profession scope of  
12 practice change submitted to the board.

13 (5) (a) The commissioner shall provide a copy of the board's recommendation and report to the  
14 entities listed in subsection (5)(b) along with proposed legislation or administrative rules, responses made by a  
15 licensing board, and a list of the documentation provided to the board.

16 (b) The recommendation and report developed under this section must be provided to:

17 (i) the governor;

18 (ii) the economic affairs interim committee or the children, families, health, and human services interim  
19 committee and any other legislative committee requesting the information; and

20 (iii) any health care-related licensing board that has participated in the review process under this  
21 section.

22 (6) If the board's recommendation conflicts with or suggests revising a proposed rule to expand the  
23 health profession scope of practice for a licensing board, the rule must be delayed until the appropriate  
24 legislative interim committee has had the opportunity to comment or the legislature has had an opportunity in  
25 regular session to make statutory changes governing the proposed rule.

26 (7) A licensing board may not adopt a rule revising or adding to a health profession scope of practice  
27 regulated by the licensing board without going through the process outlined in [sections 1 through 5].

28 (8) If legislation that is intended to adopt a health profession scope of practice is introduced and has

1 not been reviewed by the board, the department may convene the board to provide assistance to the legislature  
2 or, if the legislation is enacted, to conduct a retroactive review and make a recommendation to the subsequent  
3 legislature by providing:

4 (a) an assessment of any overlap or shared scope of practice with an existing licensed profession or  
5 occupation;

6 (b) an assessment of the extent to which an expansion in the health profession scope of practice  
7 would increase or decrease the availability of services to the public;

8 (c) details of any previous efforts in the state to implement a substantially similar change in the scope  
9 of practice;

10 (d) information on whether third-party reimbursement is available for the new or expanded scope of  
11 practice; and

12 (e) any other information deemed relevant to the legislature's consideration.

13

14 **Section 6.** Section 2-8-402, MCA, is amended to read:

15 **"2-8-402. Intent to create new board.** (1) A bill draft request to create a licensing board must include  
16 a letter of intent not exceeding 1,000 words that addresses the criteria in subsections (2) and (3).

17 (2) The letter of intent must contain the following descriptions:

18 (a) how licensing would protect and benefit the public and, in particular, how the unregulated practice  
19 of the profession or occupation would pose a hazard to public health, safety, or welfare or the common good;

20 (b) the extent of practitioners' autonomy, as indicated by the degree of independent judgment that a  
21 practitioner may exercise or the extent of skill or experience required in making the independent judgment;

22 (c) the distinguishable scope of practice;

23 (d) the overlap or shared practices with an existing, licensed profession or occupation;

24 (e) the degree, if any, to which licensing would restrict entry into the profession or occupation for  
25 reasons other than public health, safety, or welfare or the common good;

26 (f) the specialized skills or training required for the profession or occupation;

27 (g) the proposed qualifications for licensure;

28 (h) whether a licensure exception would be provided to existing practitioners and whether those

1 eligible for the exception would be required to meet proposed qualifications at a certain time;

2 (i) a list of other states that license the profession or occupation;

3 (j) regulatory alternatives other than licensing that are available to the practitioners of the profession  
4 or occupation; and

5 (k) previous efforts, if any, to regulate the profession or occupation.

6 (3) In order to help in the determination of licensing costs, the letter of intent must contain a good faith  
7 effort to provide answers to the following questions:

8 (a) how many licensees are anticipated, including the number of practitioners in Montana;

9 (b) what is the proposed makeup of the licensing board; and

10 (c) what are the projected annual licensing fees based on information from the department of labor  
11 and industry for all costs associated with a board of the projected size.

12 (4) If the new licensing board will oversee a health profession with a scope of practice that overlaps  
13 with the scope of practice of another health profession or health professions, the letter of intent must include the  
14 results of the review process provided for in [sections 1 through 5].

15 ~~(4)~~(5) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of  
16 labor and industry shall assist those developing the letter of intent under 2-8-403 or this section with the  
17 responses to subsection (3)(c) of this section.

18 ~~(5)~~(6) For the purposes of this section, a letter of intent is a public record."  
19

20 **Section 7.** Section 2-8-403, MCA, is amended to read:

21 **"2-8-403. Intent to combine profession or occupation with existing board.** (1) A bill draft request  
22 that proposes to license a profession or occupation by combining that profession or occupation with an existing  
23 board must contain a letter of intent if one of the following conditions applies:

24 (a) the profession or occupation to be licensed falls under the supervisory authority of a profession or  
25 occupation with an existing board; or

26 (b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure  
27 with a profession or occupation under an existing board. If the profession or occupation to be licensed has a  
28 scope of practice that overlaps with the scope of practice of another health profession or health professions, the

1 letter of intent must include the results of the review process provided for in [sections 1 through 5].

2 (2) A letter of intent to combine with an existing board must contain responses to the questions  
3 provided in 2-8-402.

4 (3) A letter of intent under this section is a public record."  
5

6 **Section 8.** Section 37-3-203, MCA, is amended to read:

7 **"37-3-203. Powers and duties -- rulemaking authority.** (1) The board may:

8 (a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1  
9 through 4, and of chapters covering podiatry, acupuncture, physician assistants, nutritionists, and emergency  
10 care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively. Rules adopted for  
11 emergency care providers with an endorsement to provide community-integrated health care must address the  
12 scope of practice, competency requirements, and educational requirements.

13 (b) hold hearings and take evidence in matters relating to the exercise and performance of the powers  
14 and duties vested in the board;

15 (c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this chapter  
16 as well as Title 37, chapters 6, 13, 20, and 25, and Title 50, chapter 6, regarding emergency care providers  
17 licensed by the board. The board also may assist the county attorneys of this state in the prosecution of  
18 persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection  
19 (1)(c).

20 (d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle  
21 as provided in 87-2-803(11); and

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

24 (2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees  
25 who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by  
26 habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by  
27 mental illness or chronic physical illness.

28 (b) The board shall ensure that a licensee who is required or volunteers to participate in the medical



1 assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to  
2 enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a  
3 qualified treatment program outside the state unless the board finds that there is no qualified treatment program  
4 in this state.

5 (3) (a) The board shall report annually on the number and types of complaints it has received  
6 involving physician practices in providing written certification, as defined in 50-46-302, for the use of marijuana  
7 for a debilitating medical condition provided for in Title 50, chapter 46. The report must contain:

8 (i) the number of complaints received by the board pursuant to 37-1-308;  
9 (ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-  
10 307;

11 (iii) the general nature of the complaints;

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

13 and

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

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

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

21 (i) the name of the physician;  
22 (ii) the general results of the investigation of the physician's practices; and  
23 (iii) the disciplinary action taken against the physician.

24 (d) The board shall provide the report to the children, families, health, and human services interim  
25 committee by August 1 of each year and shall make a copy of the report available on the board's website.

26 (4) The board shall review all bill drafts or other requests seeking a change in the scope of practice of  
27 a regulated health profession or requesting a review of a proposed administrative rule regarding a health  
28 profession scope of practice pursuant to [sections 1 through 5].

