

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: “An Act revising language related to economic credentialing of physicians; providing for conflicts of interest; removing a termination date for economic credentialing; amending sections 50-5-105, 50-5-117, and 50-5-207, MCA; repealing Section 6, Chapter 351, Laws of 2007, adding new section 37-2-316; and providing an immediate effective date.”

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 50-5-105, MCA, is amended to read:

**“50-5-105. ~~(Temporary)~~ Discrimination prohibited.** (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected

person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

~~(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6. (Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)~~

**50-5-105. (Effective July 1, 2009). Discrimination prohibited.** (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

~~———— (2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.~~

~~———— (b) For the purposes of this subsection (2), the following definitions apply:~~

~~———— (i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.~~

~~———— (ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.~~

~~———(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.~~

~~———(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.~~

~~———(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.”~~

**Section 2.** Section 50-5-117, MCA, is amended to read:

**50-5-117. ~~(Temporary)~~ Economic credentialing of physicians prohibited --**

**definitions.** (1) A hospital may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital may refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if:

(a) a conflict of interest exists; or

(b) the physician or a partner or employee of the physician provides medical or health care services at, ~~has an ownership interest in,~~ or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

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

(a) (i) “Abusive referral pattern” means a referral pattern that demonstrates consistent referrals based on a patient’s health insurance coverage or ability to pay.

(ii) An arbitrator, appointed as provided in 27-5-211 or jointly chosen by the hospital and the physician accused of an abusive referral pattern, may determine that an abusive referral pattern exists.

(iii) The hospital and physician shall disclose such information as required to support decision by the arbitrator. Failure to provide such information shall be considered to be an admission of an abusive referral pattern.

(iv) The cost of arbitration must be shared equally by the hospital and the physician.

(b) "Conflict of interest" means a situation where a physician or an immediate family member, partner or employee of the physician has a financial interest in any entity that may directly compete with a hospital licensed under [INSERT]. A financial interest exists where a person directly or indirectly holds, through business or investment, an ownership interest in any entity that competes with a hospital licensed under [INSERT].

~~(a)~~(c) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's education and training, current competence, experience, ability, personal character, and judgment. This term does not mean use by the hospital of:

(i) exclusive contracts with physicians;

(ii) medical staff on-call requirements;

(iii) adherence to a formulary approved by the medical staff; ~~or~~

(iv) disciplinary actions where a physician or physician group engages in abusive referral patterns based upon a patient's health insurance coverage or ability to pay; or

(v) other medical staff policy adopted to manage health care costs or improve quality.

~~(b)~~(d) "Health care facility" has the meaning provided in [50-5-101](#) and includes diagnostic facilities.

~~(e)~~(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred

provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

~~(d)~~(f) "Physician" has the meaning provided in [37-3-102](#).

(4) For the purposes of this section, the provisions of [50-5-207](#) do not apply. ~~(Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)~~

**Section 3.** Section 50-5-207, MCA, is amended to read:

**50-5-207. ~~(Temporary)~~ Denial, suspension, or revocation of health care facility license -- provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under [50-5-103](#).

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with [37-1-203](#) or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, except [50-5-117](#), is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

(Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)

~~—50-5-207. (Effective July 1, 2009) . Denial, suspension, or revocation of health care facility license—provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~—(a) The facility fails to meet the minimum standards pertaining to it prescribed under [50-5-103](#).~~

~~—(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~—(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with [37-1-203](#) or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~—(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~—(e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~—(f) There is misappropriation of the property or funds of a patient or resident.~~

~~—(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~—(h) Any provision of parts 1 through 3 is violated.~~

~~—(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~—(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

~~—(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.~~

NEW SECTION. Section 4. Title 37 MCA is amended to read:

Disclosure required.. (1) A health care practitioner shall disclose to the patient any investment interest in or employment relationship with a health care facility and provide the patient with written information as provided under subsection (3). A health care practitioner may not maintain an investment in, or employment arrangement with, a health care facility that is detrimental to a patient's health.

(2) (a) A health care practitioner may enter lawful contractual relationships, including the acquisition of ownership interests in health facilities, products, or equipment.

(b) A contractual relationship may not require referrals or an expected volume of referrals between the parties to the contract and may not specify that referrals are a basis for remaining an investor or an employee.



(3) A health care practitioner who, through an investment interest or employment interest, makes referrals to a health care facility in which that health care provider has an investment interest or employment interest shall:

(a) provide written notification of under 100 words disclosing the investment or employment interest to the patient when making a referral;

(b) provide a list of alternative, effective, and licensed facilities or health care providers if they are available;

(c) inform the patient that the patient has freedom to choose the health care provider or facility to obtain services;

and

(d) assure the patient that the referring health care provider will not treat the patient differently depending on the patient's choice of health care provider or facility.

NEW SECTION. Section 5. {standard} Effective date. [This act] is effective on passage and approval.