

1 HOUSE BILL NO. 438

2 INTRODUCED BY A. OLSZEWSKI

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REVIEW PROCESS BY A HEALTH CARE
5 COLLABORATION TECHNICAL REVIEW COMMITTEE TO MAKE RECOMMENDATIONS TO THE
6 LEGISLATURE REGARDING NEW AND REVISED SCOPES OF PRACTICE RELATED TO HEALTH CARE;
7 CREATING A REVIEW PROCESS OF ADMINISTRATIVE RULE ADOPTIONS OR PROPOSALS IMPACTING
8 HEALTH CARE-RELATED SCOPES OF PRACTICE; PROVIDING A LIMITATION ON RULES FOR NEW OR
9 REVISED HEALTH CARE-RELATED SCOPES OF PRACTICE; PROVIDING GUIDELINES FOR REVIEW;
10 AMENDING SECTIONS 2-8-402 AND 2-8-403, 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 often is 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 if each professional licensing board is able to set the scope for its own profession with no need
21 to take another profession's scope into consideration; and

22 WHEREAS, the confusion, along with overlapping scopes of practice, has resulted in numerous disputes
23 regarding interpretations, practice "creep", expansion, and overlap between allied professions and often between
24 their regulating boards; and

25 WHEREAS, these various and diverse disputes cost time and money in the legal arena, before the
26 Legislature, in administrative rule hearings, and in meetings of professional associations when much of that time
27 might be better spent on direct patient care or obtaining continuing education; and

28 WHEREAS, disputes among health care professions often require in-depth understanding of technical
29 details and specific knowledge, which may be combined to provide legislators with balanced, thoroughly
30 researched information for making the health care policy decisions involved in adopting or changing scopes of

1 practice; and

2 WHEREAS, initial determinations about scopes of practice may be most efficiently and knowledgeably
3 handled by a committee composed of interested parties, some of whom possess relevant, specific, or technical
4 information necessary for an informed comparison of professional health care scopes of practice and others of
5 whom possess economic and other professional understanding about the health care industry but are not
6 otherwise directly involved in the industry.

7

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

9

10 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Health Care
11 Collaboration and Policy Act".

12

13 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 8] is to provide the legislature
14 with balanced, scientifically appropriate information from knowledgeable professionals and interested persons
15 prior to legislative enactment or licensing board adoption of new or revised changes to a health care-related
16 scope of practice. [Sections 1 through 8] are also intended to enable collaborative discussions regarding health
17 care-related scopes of practice using a patient-centered focus.

18

19 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 8], the following definitions
20 apply:

21 (1) "Applicant group" means:

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

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

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

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

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

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

2 (3) "Committee" means the health care collaboration technical review committee provided for in [section
3 5].

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

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

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

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

12

13 **NEW SECTION. Section 4. Process for initiating committee reviews of expanded scope of**
14 **practice -- fees -- waivers -- timelines.** (1) An applicant group seeking a change in the scope of practice of a
15 regulated health profession or requesting a review of a proposed or existing administrative rule regarding a health
16 care-related scope of practice shall notify the licensing boards that may be impacted and the appropriate interim
17 committee of the legislature and submit an application to the commissioner that includes written responses to the
18 required evaluation criteria as provided in [section 7] or [section 8], as applicable.

19 (2) Along with the responses submitted to the commissioner under subsection (1), an applicant group
20 shall submit either:

21 (a) a fee of \$1,000 if the proposal to be reviewed by the committee is for a new or expanded health
22 care-related scope of practice; or

23 (b) a fee of \$100 if the proposal is for an independent, objective assessment of a health care-related
24 scope of practice described by rule.

25 (3) The fees submitted under subsection (2) must be deposited in a state special revenue account to
26 the credit of the department for use only for the purposes of [sections 1 through 8].

27 (4) The fees are nonrefundable, but the commissioner may waive all or part of a fee upon a written
28 determination by the commissioner that the application is eligible for review and that one of the following
29 considerations indicate the public interest is best served in obtaining an independent review:

30 (a) the applicant group is a state agency that would be paying the application fee with state general fund

1 money;

2 (b) members of the applicant group will not be materially affected by the implementation of the proposed
3 regulation or change in scope of practice;

4 (c) payment of the application fee would impose unreasonable hardship on members of the applicant
5 group; or

6 (d) a circumstance for which the commissioner provides a written explanation that the public interest
7 outweighs other considerations.

8 (5) An applicant group for a new licensing board or program shall notify the commissioner of a proposed
9 new health care-related scope of practice prior to filing a letter of intent as provided in 2-8-402.

10 (6) Within 2 weeks of being notified about a proposal from an applicant group, the commissioner shall
11 appoint a health care collaboration technical review committee as provided in [section 5].

12 (7) The commissioner may convene a committee to provide, at the request of a legislative administrative,
13 standing, or interim committee and on an as-needed basis, any assistance related to a change or an addition to
14 a health care-related scope of practice. At the request of the commissioner, the committee may conduct other
15 reviews or perform research on issues related to the health care-related scope of practice, including retrospective
16 reviews of scope of practice changes.

17

18 **NEW SECTION. Section 5. Health care collaboration technical review committee membership.**

19 (1) (a) Within 2 weeks of being notified that an applicant group is proposing a change in its scope of practice or
20 has requested a review of administrative rules impacting its scope of practice or that an applicant group plans
21 to initiate the process described in 2-8-402, the commissioner shall appoint a health care collaboration technical
22 review committee, consisting of seven members, to examine and investigate the proposed application for a rule
23 or legislation affecting a health care-related scope of practice.

24 (b) The commissioner or the commissioner's designee shall serve as the presiding officer, provide
25 staffing for the meeting, and arrange notifications for each meeting, which is a public meeting. The commissioner
26 or the commissioner's designee is a nonvoting member of the committee.

27 (c) Prior to appointing any member of the committee, the commissioner shall notify the presiding officer
28 of each health care-related licensing board of the proposed change. In making appointments the commissioner
29 may consult with those licensing boards that may be affected by a proposed new health care-related scope of
30 practice or a proposed change in a health care-related scope of practice.

1 (2) The committee may have no more than two appointees from the same regulated health profession
2 or the applicant group.

3 (3) For applications proposing an expanded health care-related scope of practice, the committee must
4 include:

5 (a) two licensed members from the profession or occupation for which the scope of practice is to be
6 expanded, as recommended by the applicant group, of which one member must also be recommended by the
7 association of professionals representing the licensed profession;

8 (b) two licensed members from a profession or occupation with a scope of practice that overlaps that of
9 the profession or occupation for which an expanded scope of practice is being requested. Of these appointees,
10 one must also be recommended by an association of professionals representing the licensed profession. If there
11 is more than one licensing board that notifies the commissioner of a potential overlap with the proposed change
12 in the scope of practice, the commissioner shall appoint either two licensees from the same profession with the
13 greatest number of licensees or one licensee each from the two professions with the highest numbers of
14 licensees.

15 (c) one member who is a legislator designated by an interim committee that oversees licensing boards
16 or that addresses health-related topics; and

17 (d) two members who represent the public. Neither the public appointee nor the public appointee's
18 spouse, parents, or child may be or have been a member of the profession or occupation described in subsection
19 (3)(a) or (3)(b).

20 (4) For an applicant group proposing a new licensing board for which a health care-related scope of
21 practice may overlap with the scopes of practice of a licensed health profession, the committee must include:

22 (a) two representatives of the profession or occupation for which the scope of practice is being proposed.
23 One of the representatives must also be recommended by an association of professionals representing the
24 profession, if one exists.

25 (b) two licensed members from a profession or occupation with a health care-related scope of practice
26 that overlaps that of the profession or occupation for which a new scope of practice is being requested. Of these
27 appointees, one must also be recommended by an association of professionals representing the licensed
28 profession. If more than one profession or occupation is affected by the proposed change, the commissioner shall
29 appoint members as provided under subsection (3)(b).

30 (c) one member who is a designated legislator from an interim committee that oversees licensing boards

1 or that addresses health-related topics; and

2 (d) two members who represent the public. Neither the public appointee nor the public appointee's
3 spouse, parents, or child may be or have been a member of the profession or occupation described in subsection
4 (4)(a) or (4)(b).

5 (5) A member of an interim committee who serves on the health care collaboration technical review
6 committee must be paid as provided in 5-2-302 from the state special revenue account provided for in [section
7 4(3)]. All other committee members must be paid \$50 a day from the state special revenue account provided for
8 in [section 4(3)] and receive expenses as provided in 2-18-501 through 2-18-503 only for actual meeting times,
9 travel, and meal expenses.

10
11 **NEW SECTION. Section 6. Committee meeting -- recommendation.** (1) (a) The commissioner shall
12 call a meeting of the committee within 45 days of the initial notification of the proposal for a new health
13 care-related scope of practice, a revised health care-related scope of practice, or a review of an administrative
14 rule regarding a scope of practice affecting the health profession. The commissioner shall provide copies of the
15 proposed new scope of practice or a revised scope of practice or a review request to committee members prior
16 to the meeting along with documentation as provided in subsection (3).

17 (b) If the notification of the proposal under subsection (1)(a) is within 45 days of August 1 in a year
18 preceding a regular legislative session, the commissioner shall apprise the applicant group that an application
19 may be too late for timely consideration prior to the legislative session.

20 (2) The committee shall serve as a factfinding body and may request prior to, at, or after the meeting any
21 additional information or testimony from technical experts that the committee members consider necessary to
22 make an informed recommendation. Committee members shall consider available scientific evidence. The
23 commissioner shall organize at least one public factfinding hearing before the committee makes a
24 recommendation.

25 (3) Documentation to be provided by the applicant group for consideration by the committee must include
26 a letter of intent that summarizes the proposed scope of practice and addresses the concerns in [section 7] or
27 [section 8], as applicable, to be addressed by the committee. An applicant group proposing a new professional
28 or occupational license with a new health care-related scope of practice shall complete the steps in 2-8-402 or
29 2-8-403, as appropriate, and provide that information to the department.

30 (4) (a) For a new or expanded scope of practice affecting a health profession, the committee shall review

1 the guidelines in [section 7] and determine whether a need exists for the new or proposed change in a health
2 care-related scope of practice and whether potential benefits of the proposed change outweigh potential harm.
3 For a review requested under [section 8], the committee shall review guidelines and the information provided
4 pursuant to [section 8] to determine whether administrative rules adopted or proposed alter a health care-related
5 scope of practice.

6 (b) Based on this review and after the public factfinding hearing, the committee shall make a
7 recommendation prior to August 1 before the start of the next regular legislative session.

8 (c) The recommendation related to a proposed change in a health care-related scope of practice must
9 include the committee's findings, as well as:

10 (i) a report on what other states do that have a scope of practice for the relevant profession that is
11 identical to or similar to the proposed change. The report must include any available information on how the
12 scope of practice has affected the quality and cost of health care in the state.

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

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

18 (iv) evidence-based recommendations to the legislature for each proposed health care-related scope of
19 practice change submitted to the committee.

20 (d) Whenever the committee conducts a review of administrative rules, the committee shall report as
21 provided in subsection (5).

22 (5) (a) The commissioner shall provide a copy of the committee's recommendations to the entities listed
23 in subsection (5)(b) along with a report that provides any findings of the committee, proposed legislation,
24 responses made by a licensing board as described under subsection (6), and a list of the documentation provided
25 to the committee.

26 (b) The recommendations and report developed under this section must be provided by August 15 to:

27 (i) the governor and lieutenant governor;

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

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

1 (6) A licensing board that has conducted its own review shall develop its recommendations in a manner
2 consistent with the process and guidelines outlined in [sections 1 through 8] and may file its response to the
3 committee's recommendations, which must be completed in time to be included in the report as provided in
4 subsection (5)(a).

5 (7) If the recommendation conflicts with or suggests revising a proposed rule to expand the health
6 care-related scope of practice for a licensing board, the rule must be delayed until the legislature has had an
7 opportunity in regular session to make statutory changes regarding the proposed rule. If a legislature meeting
8 in regular session adjourns without making statutory changes impacting the proposed rule, the proposed rule may
9 be filed the day after final adjournment of the legislature. A notice regarding the recommendation must be
10 included in the Montana Administrative Register adjacent to any notice of adoption of the rule as provided in
11 2-4-406(3), except that the cost of publication of the recommendation must be paid by the agency filing the rule.

12 (8) A recommendation from the committee that suggests specific scope-of-practice legislation may be
13 included by the department in its requests for proposed legislation.

14 (9) A board may not adopt a rule revising or adding to a health care-related scope of practice regulated
15 by the board without going through the process outlined in [sections 1 through 8].

16 (10) If legislation is proposed that is intended to adopt a health care-related scope of practice that has
17 not been reviewed by the committee, the department may convene a committee as provided in [section 5] to
18 provide assistance to the legislature or, if the legislation is enacted, to conduct a retroactive review and make
19 recommendations to the next legislature.

20
21 **NEW SECTION. Section 7. Review of proposed new or expanded scope of practice -- guidelines**

22 **-- process.** (1) A health care-related scope of practice may be changed only when:

23 (a) the health, safety, and welfare of the public are inadequately addressed by the present scope of
24 practice or limitations on the scope of practice;

25 (b) the proposed change in a scope of practice does not create a significant new danger to the health,
26 safety, or welfare of the public;

27 (c) enactment of the proposed change in scope of practice provides a benefit to the health, safety, or
28 welfare of the public; and

29 (d) practitioners in the health profession requesting the change in the scope of practice are adequately
30 educated and trained to perform the new skill or service.

1 (2) Other considerations for the committee to review for a new or expanded health care-related scope
2 of practice are:

3 (a) evidence of appropriate professional programs after graduation and examination in a field to train a
4 practitioner to perform a new skill or service in a safe manner;

5 (b) evidence of assessment measures through examination or other testing that ensures a practitioner
6 is competent to perform the new skill or service; and

7 (c) availability of adequate evaluation measures, including a code of ethics, to determine if a practitioner
8 is performing the new skill or service adequately and, if not, is subject to appropriate discipline.

9 (3) The department may develop standardized questions designed to solicit information for the committee
10 to use in evaluating the criteria for a new or revised health care-related scope of practice. The questions may
11 address the criteria required to be submitted by the applicant, including:

12 (a) whether the scope of practice is such a specialized skill that the public is not qualified or is unable
13 to select a competent practitioner without assurance by a licensing board that minimum qualifications have been
14 met; and

15 (b) whether a new or revised health care-related scope of practice is necessary, including:

16 (i) the nature of the potential harm to the public if the health care-related scope of practice is not changed
17 and the extent to which there is a threat to public health and safety;

18 (ii) the extent to which consumers need or may benefit from practitioners having the new or revised health
19 care-related scope of practice;

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

23 (iv) the extent to which the incidence of specific health care problems may reasonably be expected to
24 be reduced by a change in the scope of practice or potentially exacerbated by a change in the scope of practice;
25 and

26 (v) an indication of whether a change or addition of a scope of practice may restrict entry into a health
27 care practice or provision of a service to consumers.

28 (4) The committee may, for a board or a program proposing to revise a health care-related scope of
29 practice, request from the department a history of evidence that the licensing board or program has functioned
30 adequately in protecting the public.

1 (5) The committee may, for an applicant group proposing a new health care-related scope of practice
2 or a change in the scope of practice, request information regarding the terms of licensure and whether continuing
3 education, reexamination, or other evaluation of continued competency is included in the proposal.

4 (6) The applicant group shall provide to the committee:

5 (a) information regarding whether other states allow licensees to address a comparable scope of practice
6 and whether states that have allowed an expanded health care-related scope of practice have information
7 detailing conditions before and impacts after the change in the scope of practice;

8 (b) a summary of current state and any federal laws and regulations affecting the proposed new or
9 revised health care-related scope of practice;

10 (c) an assessment of any overlap or shared scope of practice with an existing licensed profession or
11 occupation;

12 (d) an assessment of the extent to which an expansion in the health care-related scope of practice would
13 increase or decrease the availability of services to the public;

14 (e) details of any previous efforts in the state to implement the change in the scope of practice; and

15 (f) information on whether third-party reimbursement is available for the new or expanded scope of
16 practice.

17

18 **NEW SECTION. Section 8. Review of proposed or adopted administrative rules impacting scope**
19 **of practice -- guidelines -- process.** (1) The department may develop standardized questions designed to solicit
20 information for the committee to use in evaluating a proposed or adopted administrative rule changing a health
21 care-related scope of practice. The questions may be the same as or similar to the questions developed under
22 [section 7].

23 (2) An applicant group shall submit the following information to the department for review by the
24 committee under this section:

25 (a) identification of the profession or occupation making the request and the adopted or proposed
26 administrative rule that changes the health care-related scope of practice;

27 (b) information provided to the licensure board in the rule comment period;

28 (c) a summary of current state or federal laws and regulations relevant to the health care-related scope
29 of practice;

30 (d) a summary of the scope of practice change; and

1 (e) responses to the standardized questions that the department has developed under subsection (1).

2

3 **Section 9.** Section 2-8-402, MCA, is amended to read:

4 **"2-8-402. Intent to create new board.** (1) A bill draft request to create a licensing board must include
5 a letter of intent not exceeding 1,000 words that addresses the criteria in subsections (2) ~~and (3)~~ through (4).

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

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

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

11 (c) the distinguishable scope of practice;

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

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

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

16 (g) the proposed qualifications for licensure;

17 (h) whether a licensure exception would be provided to existing practitioners and whether those eligible
18 for the exception would be required to meet proposed qualifications at a certain time;

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

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

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

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

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

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

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

29 (4) If the overlapping scope of practice or dual licensure relates to health care, the results of the review
30 process provided for in [sections 1 through 8] must be included with the letter of intent.

1 ~~(4)~~(5) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of
2 labor and industry shall assist those developing the letter of intent under 2-8-403 or this section with the
3 responses to subsection (3)(c) of this section.

4 ~~(5)~~(6) For the purposes of this section, a letter of intent is a public record."
5

6 **Section 10.** Section 2-8-403, MCA, is amended to read:

7 **"2-8-403. Intent to combine profession or occupation with existing board.** (1) A bill draft request
8 that proposes to license a profession or occupation by combining that profession or occupation with an existing
9 board must contain a letter of intent if one of the following conditions applies:

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

12 (b) the profession or occupation to be licensed has an overlapping scope of practice or dual licensure
13 with a profession or occupation under an existing board. If the overlapping scope of practice or dual licensure
14 relates to health care, the results of the review process provided for in [sections 1 through 8] must be included
15 with the letter of intent.

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

18 (3) A letter of intent under this section is a public record."
19

20 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 8] are intended to be
21 codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1
22 through 8].

23

24 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

25

- END -