

SENATE BILL NO. 535

INTRODUCED BY K. BOGNER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO EXPERIMENTAL TREATMENTS; PROVIDING FOR LICENSING OF EXPERIMENTAL TREATMENT CENTERS; AMENDING THE RIGHT TO TRY ACT; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING DEFINITIONS; AMENDING SECTIONS 33-1-102, 37-3-103, 50-5-101, 50-12-102, 50-12-103, 50-12-104, 50-12-105, 50-12-106, 50-12-107, 50-12-108, 50-12-109, AND 50-12-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Licensure of experimental treatment centers -- fees -- rulemaking.**

(1) (a) The department shall adopt procedures for licensing experimental treatment centers. A person may not operate an experimental treatment center without a license. The application for a license must include:

- (i) the name and address of the applicant;
- (ii) the location of the experimental treatment center;
- (iii) the name of the person or persons who will manage or supervise the experimental treatment center; and
- (iv) other information required by the department by rule.

(b) The department shall approve or deny the application within 90 calendar days after receiving a complete application.

(2) The department shall adopt administrative rules for licensure, including but not limited to rules establishing:

- (a) minimum operational standards;
- (b) the creation of written policies and procedures;
- (c) oversight mechanisms;
- (d) facility inspections;

1 (e) facility safety standards; and

2 (f) data collection and quality assurance systems, including outcome monitoring and adverse
3 event reporting.

4 (3) (a) The fee to process an application for an experimental treatment center is \$10,000 to assist
5 with administrative processing costs.

6 (b) The annual renewal fee is \$5,000.

7

8 **Section 2.** Section 33-1-102, MCA, is amended to read:

9 **"33-1-102. Compliance required -- exceptions -- health service corporations -- health**
10 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may
11 not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be
12 performed in Montana without complying with the applicable provisions of this code.

13 (2) The provisions of this code do not apply with respect to:

14 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

15 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

16 (c) fraternal benefit societies, except as stated in chapter 7; and

17 (d) direct agreements between a health care provider or health care facility as defined in 50-12-
18 102 and a patient for the provision of an experimental treatment or services related to the provision of an
19 experimental treatment.

20 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of
21 the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

22 (4) This code does not apply to health maintenance organizations to the extent that the existence
23 and operations of those organizations are governed by chapter 31.

24 (5) This code does not apply to workers' compensation insurance programs provided for in Title
25 39, chapter 71, part 21, and related sections.

26 (6) The department of public health and human services may limit the amount, scope, and duration
27 of services for programs established under Title 53 that are provided under contract by entities subject to this
28 title. The department of public health and human services may establish more restrictive eligibility requirements

1 and fewer services than may be required by this title.

2 (7) This code does not apply to the state employee group insurance program established in Title 2,
3 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25,
4 part 13.

5 (8) This code does not apply to insurance funded through the state self-insurance reserve fund
6 provided for in 2-9-202.

7 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to
8 any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
9 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
10 deductible, or self-insurance plan.

11 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any
12 arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement,
13 plan, or program of a single political subdivision of this state in which the political subdivision provides to its
14 officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

15 (10) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
16 of, proposal to make, and administration of a service contract governed by Title 30, chapter 14, part 13.

17 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
18 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable
19 for the financial risk under the contract with the third party as provided in 7-34-103.

20 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city,
21 or town, the entity is subject to the provisions of this code.

22 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter
23 25, part 14.

24 (13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services
25 that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership
26 applications, charge membership fees, and provide air ambulance services to subscription members and
27 designated members of their households.

28 (14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30,

1 chapter 14, part 22, or to vehicle theft protection products or vehicle theft protection product warranties that are
2 governed by Title 30, chapter 14, part 13.

3 (15) This code does not apply to direct patient care agreements established pursuant to 50-4-107.

4 (16) This code does not apply to a health care sharing ministry that meets the requirements of 50-4-
5 111.

6 (17) This code does not apply to a regulatory sandbox waiver, except as otherwise specified by the
7 commissioner or as provided in 33-2-2501. (Subsection (17) terminates July 30, 2029--sec. 5, Ch. 546, L.
8 2023.)"

9

10 **Section 3.** Section 37-3-103, MCA, is amended to read:

11 **"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a
12 license with respect to any of the following acts:

13 (a) the gratuitous rendering of services in cases of emergency or catastrophe;

14 (b) the rendering of services in this state by a physician lawfully practicing medicine in another
15 state or territory. However, if the physician does not limit the services to an occasional case or if the physician
16 has any established or regularly used hospital connections in this state or maintains or is provided with, for the
17 physician's regular use, an office or other place for rendering the services, the physician must possess a
18 license to practice medicine in this state.

19 (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

20 (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

21 (e) the practice of optometry under the conditions and limitations defined by the laws of this state;

22 (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

23 (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by
24 rabbis;

25 (h) the practice of medicine by a physician licensed in another state and employed by the federal
26 government;

27 (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their
28 duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations

1 defined by law;

2 (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they
3 are training, subject to the conditions and limitations of this chapter;

4 (k) the rendering of services by a surgical or medical technician or medical assistant, as provided
5 in 37-3-104, under the appropriate amount and type of supervision of a person licensed under the laws of this
6 state to practice medicine, but this exemption does not extend the scope of the individuals listed in this
7 subsection (1)(k);

8 (l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

9 (m) the practice by persons licensed under the laws of this state to practice a limited field of the
10 healing arts, including physical therapists and other licensees not specifically designated, under the conditions
11 and limitations defined by law;

12 (n) the execution of a death sentence pursuant to 46-19-103;

13 (o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry
14 midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or
15 the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or
16 administer a prescription drug, as those terms are defined in 37-7-101.

17 (p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5; or

18 (q) the rendering of experimental treatment services by a health care provider exclusively through
19 a licensed experimental treatment center pursuant to Title 50, chapter 12, part 1, provided that:

20 (i) the health care provider holds a valid license in any state, territory, or jurisdiction and has
21 appropriate qualifications as determined by the center; and

22 (ii) delivers services under the supervision of a medical director licensed to practice medicine in
23 the state.

24 (2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing
25 arts shall confine themselves to the field for which they are licensed or registered and to the scope of their
26 respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title
27 "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in
28 the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or disorder of mind except

1 to the extent and under the conditions expressly provided by the law under which they are licensed."

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3 **Section 4.** Section 50-5-101, MCA, is amended to read:

4 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly
5 indicates otherwise, the following definitions apply:

6 (1) "Accreditation" means a designation of approval.

7 (2) "Activities of daily living" means tasks usually performed in the course of a normal day in a
8 resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

9 (3) "Adult day-care center" means a facility, freestanding or connected to another health care
10 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily
11 living but that does not provide overnight care.

12 (4) (a) "Adult foster care home" means a private home or other facility that offers, except as
13 provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons
14 who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under
15 the full guardianship of the owner or manager.

16 (b) As used in this subsection (4), the following definitions apply:

17 (i) "Aged person" means a person as defined by department rule as aged.

18 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or
19 disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific
20 person is available to meet those basic needs.

21 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
22 department rule as disabled.

23 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing
24 such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
25 administration.

26 (B) The term does not include the administration of prescriptive medications.

27 (5) "Affected person" means an applicant for a certificate of need, a long-term care facility located
28 in the geographic area affected by the application, an agency that establishes rates for long-term care facilities,

1 or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.

2 (6) "Assisted living facility" means a congregate residential setting that provides or coordinates
3 personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-
4 related services.

5 (7) "Capital expenditure" means:

6 (a) an expenditure made by or on behalf of a long-term care facility that, under generally accepted
7 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

8 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or
9 any other property of value had changed hands.

10 (8) "Certificate of need" means a written authorization by the department for a person to proceed
11 with a proposal subject to 50-5-301.

12 (9) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
13 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health
14 problems and endangers the health, interpersonal relationships, or economic function of an individual or the
15 public health, welfare, or safety.

16 (10) "Clinical laboratory" means a facility for the microbiological, serological, chemical,
17 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of
18 materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or
19 treatment of a disease or assessment of a medical condition.

20 (11) "Comparative review" means a joint review of two or more certificate of need applications that
21 are determined by the department to be competitive in that the granting of a certificate of need to one of the
22 applicants would substantially prejudice the department's review of the other applications.

23 (12) "Congregate" means the provision of group services designed especially for elderly or disabled
24 persons who require supportive services and housing.

25 (13) "Construction" means the physical erection of a new health care facility and any stage of the
26 physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

27 (a) an existing health care facility; or

28 (b) a long-term care facility as defined in 50-5-301.

1 (14) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
2 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-
3 5-233.

4 (15) "Department" means the department of public health and human services provided for in 2-15-
5 2201.

6 (16) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

7 (17) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
8 diseases and includes freestanding hemodialysis units.

9 (18) "Experimental treatment center" means a facility that specializes in providing experimental
10 treatments pursuant to Title 50, chapter 12, part 1.

11 ~~(18)~~(19)"Federal acts" means federal statutes for the construction of health care facilities.

12 ~~(19)~~(20)"Governmental unit" means the state, a state agency, a county, municipality, or political
13 subdivision of the state, or an agency of a political subdivision.

14 ~~(20)~~(21)(a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
15 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
16 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
17 individual. The term includes abortion clinics as defined in 50-20-901, chemical dependency facilities, critical
18 access hospitals, eating disorder centers, end-stage renal dialysis facilities, experimental treatment centers,
19 home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care
20 facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental
21 health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation
22 facilities, residential care facilities, residential treatment facilities, and rural emergency hospitals.

23 (b) The term does not include offices of private physicians, dentists, or other physical or mental
24 health care workers regulated under Title 37, including licensed addiction counselors.

25 ~~(21)~~(22)"Home health agency" means a public agency or private organization or subdivision of the
26 agency or organization that is engaged in providing home health services to individuals in the places where
27 they live. Home health services must include the services of a licensed registered nurse and at least one other
28 therapeutic service and may include additional support services.

1 ~~(22)~~(23)"Home infusion therapy agency" means a health care facility that provides home infusion
2 therapy services.

3 ~~(23)~~(24)"Home infusion therapy services" means the preparation, administration, or furnishing of
4 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.
5 The services include an educational component for the patient, the patient's caregiver, or the patient's family
6 member.

7 ~~(24)~~(25)"Hospice" means a coordinated program of home and inpatient health care that provides or
8 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family
9 arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final
10 stages of illness and dying and that includes formal bereavement programs as an essential component. The
11 term includes:

12 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice
13 that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

14 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program
15 that can house three or more hospice patients.

16 ~~(25)~~(26)(a) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
17 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
18 Except as otherwise provided by law, services provided must include medical personnel available to provide
19 emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority.
20 A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days
21 a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

22 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
23 tubercular patients; and

24 (ii) specialty hospitals.

25 (b) The term does not include critical access hospitals.

26 (c) The emergency care requirement for a hospital that specializes in providing health services for
27 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
28 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by

1 licensed registered nurses.

2 ~~(26)~~(27)"Infirmery" means a facility located in a university, college, government institution, or industry
3 for the treatment of the sick or injured, with the following subdefinitions:

4 (a) an "infirmery--A" provides outpatient and inpatient care;

5 (b) an "infirmery--B" provides outpatient care only.

6 ~~(27)~~(28)(a) "Intermediate care facility for the developmentally disabled" means a facility or part of a
7 facility that provides intermediate developmental disability care for two or more persons.

8 (b) The term does not include community homes for persons with developmental disabilities that
9 are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under
10 52-4-203.

11 ~~(28)~~(29)"Intermediate developmental disability care" means the provision of intermediate nursing care
12 services, health-related services, and social services for persons with a developmental disability, as defined in
13 53-20-102, or for persons with related problems.

14 ~~(29)~~(30)"Intermediate nursing care" means the provision of nursing care services, health-related
15 services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing
16 care.

17 ~~(30)~~(31)"Licensed health care professional" means a licensed physician, physician assistant, advanced
18 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
19 department of labor and industry.

20 ~~(34)~~(32)(a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing
21 care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two
22 or more individuals or that provides personal care.

23 (b) The term does not include community homes for persons with developmental disabilities
24 licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203;
25 youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar
26 accommodations providing for transients, students, or individuals who do not require institutional health care; or
27 correctional facilities operating under the authority of the department of corrections.

28 ~~(32)~~(33)"Medical assistance facility" means a facility that meets both of the following:

1 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
2 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a
3 longer period is required because transfer to a hospital is precluded because of inclement weather or
4 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
5 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
6 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
7 of the individual.

8 (b) either is located in a county with fewer than six residents a square mile or is located more than
9 35 road miles from the nearest hospital.

10 ~~(33)~~(34)"Mental health center" means a facility providing services for the prevention or diagnosis of
11 mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
12 combination of these services.

13 ~~(34)~~(35)"Nonprofit health care facility" means a health care facility owned or operated by one or more
14 nonprofit corporations or associations.

15 ~~(35)~~(36)"Offer" means the representation by a health care facility that it can provide specific health
16 services.

17 ~~(36)~~(37)(a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
18 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational
19 functions of a youth and that:

- 20 (i) serves either adjudicated or nonadjudicated youth;
21 (ii) charges a fee for its services; and
22 (iii) provides all or part of its services in the outdoors.

23 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl
24 scouts, 4-H clubs, or other similar organizations.

25 ~~(37)~~(38)"Outpatient center for primary care" means a facility that provides, under the direction of a
26 licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient
27 center for surgical services.

28 ~~(38)~~(39)"Outpatient center for surgical services" means a clinic, infirmary, or other institution or

1 organization that is specifically designed and operated to provide surgical services to patients not requiring
2 hospitalization and that may include recovery care beds.

3 ~~(39)~~(40)"Patient" means an individual obtaining services, including skilled nursing care, from a health
4 care facility.

5 ~~(40)~~(41)"Person" means an individual, firm, partnership, association, organization, agency, institution,
6 corporation, trust, estate, or governmental unit, whether organized for profit or not.

7 ~~(41)~~(42)"Personal care" means the provision of services and care for residents who need some
8 assistance in performing the activities of daily living.

9 ~~(42)~~(43)"Practitioner" means an individual licensed by the department of labor and industry who has
10 assessment, admission, and prescription authority.

11 ~~(43)~~(44)"Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24
12 hours by a patient recovering from surgery or other treatment.

13 ~~(44)~~(45)"Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in
14 the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,
15 psychological and social services, or vocational evaluation and training or any combination of these services
16 and in which the major portion of the services is furnished within the facility.

17 ~~(45)~~(46)"Resident" means an individual who is in a long-term care facility or in a residential care facility.

18 ~~(46)~~(47)"Residential care facility" means an adult day-care center, an adult foster care home, an
19 assisted living facility, or a retirement home.

20 ~~(47)~~(48)"Residential psychiatric care" means active psychiatric treatment provided in a residential
21 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or
22 behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the
23 individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's
24 discharge to less restrictive levels of care at the earliest possible time.

25 ~~(48)~~(49)"Residential treatment facility" means a facility operated for the primary purpose of providing
26 residential psychiatric care to individuals under 21 years of age.

27 ~~(49)~~(50)"Retirement home" means a building or buildings in which separate living accommodations are
28 rented or leased to individuals who use those accommodations as their primary residence.

1 ~~(50)~~(51)"Rural emergency hospital" means a facility defined in 42 U.S.C. 1395x(kkk)(2) that is
2 designated by the department as a rural emergency hospital in accordance with 50-5-234.

3 ~~(54)~~(52)"Skilled nursing care" means the provision of nursing care services, health-related services,
4 and social services under the supervision of a licensed registered nurse on a 24-hour basis.

5 ~~(52)~~(53)(a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the
6 diagnosis, care, or treatment of one or more of the following categories:

7 (i) patients with a cardiac condition;

8 (ii) patients with an orthopedic condition;

9 (iii) patients undergoing a surgical procedure; or

10 (iv) patients treated for cancer-related diseases and receiving oncology services.

11 (b) For purposes of this subsection ~~(52)~~ (53), a specialty hospital may provide other services for
12 medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise
13 provided by law if the care encompasses 35% or less of the hospital services.

14 (c) The term "specialty hospital" does not include:

15 (i) psychiatric hospitals;

16 (ii) rehabilitation hospitals;

17 (iii) children's hospitals;

18 (iv) long-term care hospitals; or

19 (v) critical access hospitals.

20 ~~(53)~~(54)"State long-term care facilities plan" means the plan prepared by the department to project the
21 need for long-term care facilities within Montana and approved by the governor and a statewide health
22 coordinating council appointed by the director of the department.

23 ~~(54)~~(55)"Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
24 acute care or extended skilled nursing care to a patient."
25

26 **Section 5.** 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) "Experimental treatment" means the provision of a medical intervention by a health care

1 provider involving an investigational drug, biological product, device, or other treatment that has successfully
2 completed phase 1 of a clinical trial but has not yet been approved for general use by the United States food
3 and drug administration and either:

4 (a) remains under investigation in a clinical trial approved by the United States food and drug
5 administration; or

6 (b) has a demonstrated safety record through documented clinical evidence from a qualified
7 medical institution as defined by department rule.

8 (2) "Experimental treatment center" has the same meaning as provided in 50-5-101.

9 (4)(3) "Health care facility" has the same meaning as provided in 50-5-101. The term includes an
10 experimental treatment center.

11 (2)(4) "Health care provider" means any of the following individuals licensed pursuant to Title 37 or
12 otherwise exempted pursuant to 37-3-103:

13 (a) a physician;

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

16 (c) a physician assistant; and

17 (d) a registered nurse performing services at an experimental treatment center.

18 (3) ~~"Investigational drug, biological product, or device" means a drug, biological product, or device~~
19 ~~that:~~

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

22 (b) ~~remains under investigation in a United States food and drug administration-approved clinical~~
23 ~~trial.~~

24 (4)(5) ~~"Written informed "Informed consent" means a written document written documentation or~~
25 ~~digital recordation that meets the requirements of 50-12-105.~~

26 (6) "Provider agreement" means a contract authorizing a health care provider to deliver an
27 experimental treatment, or services related to the provision of an experimental treatment, under the supervision
28 of an experimental treatment center's medical director."

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Section 6. Section 50-12-103, MCA, is amended to read:

"50-12-103. Availability of experimental drugs treatments. (1) A manufacturer, ~~of an~~ health care provider, or health care facility may make the ~~investigational drug, biological product, or device~~ an experimental treatment available to a patient who has requested the ~~drug, product,~~ or device pursuant to this part upon a patient's request.

(2) The manufacturer, health care provider, or health care facility may:

(a) provide an ~~investigational drug, biological product, or device~~ experimental treatment to a patient without receiving compensation; or

(b) ~~require a patient to pay the costs of or the costs associated with the manufacture of the~~ investigational drug, biological product, or device establish payment arrangements with a patient for an experimental treatment.

(3) A manufacturer, health care provider, or health care facility is not required to make an ~~investigational drug, biological product, or device~~ experimental treatment available to a patient."

Section 7. Section 50-12-104, MCA, is amended to read:

"50-12-104. Patient requirements. A patient is eligible for an experimental ~~treatment with an~~ treatment ~~with an~~ investigational drug, biological product, or device if the patient has:

(1) ~~considered all~~ evaluated other treatment options currently approved by the United States food and drug administration;

(2) received a recommendation from the patient's treating health care provider for an ~~investigational drug, biological product, or device~~ experimental treatment;

(3) given ~~written~~ informed consent for the use of the ~~investigational drug, biological product, or~~ device experimental treatment; and

(4) received documentation from the treating health care provider that the patient meets the requirements of this section."

Section 8. Section 50-12-105, MCA, is amended to read:

1 **"50-12-105. ~~Written informed~~ Informed consent required.** (1) A patient or a patient's legal guardian
2 ~~must shall~~ provide ~~written~~ informed consent ~~for to~~ receive an experimental treatment ~~with an investigational~~
3 ~~drug, biological product, or device.~~

4 (2) At a minimum, the ~~written~~ informed consent must include:

5 (a) an explanation of the currently approved products, ~~and treatments, and services relevant to the~~
6 patient's for the disease, or condition, or desired health outcomes from which the patient suffers;

7 (b) an attestation that the patient concurs with the treating health care provider in believing that all
8 currently approved and conventionally recognized treatments are unlikely to ~~improve the patient's condition or~~
9 are otherwise impractically available to achieve the patient's desired health outcomes;

10 (c) clear identification of the specific ~~investigational drug, biological product, or device~~
11 experimental treatment that the patient is seeking to use;

12 (d) a description of the potentially best and worst outcomes of ~~using the investigational drug,~~
13 ~~biological product, or device~~ receiving the experimental treatment and a realistic description of the most likely
14 outcome;

15 (e) a statement that the patient's health plan or third-party administrator and provider are not
16 obligated to pay for any care or treatments consequent to the use of the ~~investigational drug, biological product,~~
17 ~~or device~~ experimental treatment unless they are specifically required to do so by law or contract;

18 (f) as applied to patients potentially eligible for hospice care, a statement that the patient's
19 eligibility for hospice care may be withdrawn if the patient begins curative treatment with the ~~investigational~~
20 ~~drug, biological product, or device~~ experimental treatment and that hospice care may be reinstated if the
21 treatment ends and the patient meets hospice eligibility requirements; ~~and~~

22 (g) a statement that the patient understands that the patient is liable for all expenses related to the
23 use of the ~~investigational drug, biological product, or device~~ experimental treatment and that the liability for
24 expenses extends to the patient's estate, unless a contract between the patient and the manufacturer, ~~of the~~
25 ~~drug, biological product, or device~~ health care provider, or health care facility providing the experimental
26 treatment states otherwise; ~~and~~

27 (h) a statement that the patient acknowledges that the experimental treatment cannot be used to
28 assist with ending the patient's natural life.

1 ~~(3) — The description of potential outcomes required under subsection (2)(d) must:~~
 2 ~~(a) — include the possibility that new, unanticipated, different, or worse symptoms might result; and~~
 3 ~~(b) — be based on the treating health care provider's knowledge of the proposed treatment in~~
 4 ~~conjunction with an awareness of the patient's condition.~~

5 ~~(4)(3) The written informed consent must be:~~

6 ~~(a) (i) be signed by:~~

7 ~~(i)(A) the patient;~~

8 ~~(i)(B) a parent or legal guardian, if the patient is a minor; or~~

9 ~~(i)(C) a legal guardian, if a guardian has been appointed pursuant to Title 72, chapter 5; and~~

10 ~~(b)(ii) be attested to by the patient's treating health care provider and a witness; or~~

11 ~~(b) include verified comprehension and consent through interactive discussions with the individuals~~
 12 ~~set forth in subsection (3)(a) that have been recorded using audio, video, or any other digital platform.~~

13 ~~(4) For transparency and quality purposes, it is recommended that health care providers and~~
 14 ~~health care facilities utilize the enhanced informed consent process set forth in subsection (3)(b)."~~

15

16 **Section 9.** Section 50-12-106, MCA, is amended to read:

17 **"50-12-106. Effect on insurance coverage and health care services.** (1) This part does not:

18 (a) expand the coverage required of an insurer under Title 33 or of the state or a local government
 19 under Title 2 or Title 53;

20 (b) affect the requirements for insurance coverage of routine patient costs for patients involved in
 21 approved cancer clinical trials pursuant to 2-18-704, 33-22-101, 33-22-153, 33-31-111, 33-35-306, 53-4-1005,
 22 or 53-6-101;

23 (c) require a health plan, third-party administrator, or governmental agency to pay costs associated
 24 with the use, care, or treatment of a patient with an ~~investigational drug, biological product, or device; or~~
 25 experimental treatment;

26 (d) require a health care facility to provide new or additional services; or

27 ~~(e) prevent health care facilities or health care providers from establishing payment requirements~~
 28 for experimental treatments and other services related to the provision of experimental treatments.

1 (2) A health plan, third-party administrator, or governmental agency may provide coverage for the
 2 cost of an ~~investigational drug, biological product, or device~~ experimental treatment or the cost of services
 3 related to the use provision of an ~~investigational drug, biological product, or device~~ experimental treatment
 4 under this part.

5 (3) A health care facility may approve the use provision of an ~~investigational drug, biological~~
 6 ~~product, or device~~ experimental treatment in the health care facility.

7 (4) An experimental treatment facility may enter into provider agreements and establish any
 8 payment arrangement, including digital and alternative currencies, with patients, providers, or third-party
 9 payers."

10

11 **Section 10.** Section 50-12-107, MCA, is amended to read:

12 **"50-12-107. Heirs not liable for payments.** If a patient dies while being treated with an
 13 ~~investigational drug, biological product, or device~~ experimental treatment, the patient's heirs are not liable for
 14 any outstanding debt related to the treatment or to a lack of insurance as a result of the treatment."

15

16 **Section 11.** Section 50-12-108, MCA, is amended to read:

17 **"50-12-108. Disciplinary action prohibited.** (1) A licensing board may not revoke, fail to renew,
 18 suspend, or take any action against a license issued under Title 37 to a health care provider based solely on
 19 the health care provider's recommendations to a patient regarding access to or provision of an experimental
 20 treatment with an investigational drug, biological product, or device.

21 (2) The department of public health and human services may not take action against:

22 (a) a health care provider's medicare certification based solely on the health care provider's
 23 recommendation that a patient have access to an ~~investigational drug, biological product, or device~~
 24 experimental treatment; or

25 (b) a health care facility's license based solely on the facility's recommendation to a patient
 26 regarding access to or the provision of an experimental treatment in accordance with this part."

27

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

1 **"50-12-109. State action prohibited.** (1) An official, employee, or agent of the state of Montana may
2 not block or attempt to block;

3 (a) a patient's access to an ~~investigational drug, biological product, or device~~ experimental
4 treatment; or

5 (b) a health care facility's recommendation that a patient have access to, or the health care
6 facility's provision of, an experimental treatment.

7 (2) ~~Counseling A health care provider's counseling, advice, or a recommendation consistent with~~
8 ~~medical standards of care from a licensed health care provider~~ about treatment options, including experimental
9 treatments, is not a violation of this section."

10

11 **Section 13.** Section 50-12-110, MCA, is amended to read:

12 **"50-12-110. Immunity from suit.** A manufacturer of an ~~investigational drug, biological product, or~~
13 ~~device~~ experimental treatment, a pharmacist, a health care facility, a health care provider, or a person or entity
14 involved in the care of a patient using an ~~investigational drug, biological product, or device~~ experimental
15 treatment is immune from suit for any harm done to the patient resulting from the ~~investigational drug, biological~~
16 ~~product, or device~~ experimental treatment if:

17 (1) the manufacturer, pharmacist, health care facility, health care provider, or other person or entity
18 is complying in good faith with the terms of this part ~~act and has exercised reasonable care~~ ;

19 (2) the harm was not the result of gross negligence or willful or wanton acts or omissions by the
20 manufacturer, pharmacist, health care facility, health care provider, or other person or entity involved in the care
21 of the patient; and

22 (3) established experimental treatment center protocols and safety standards, as applicable, were
23 followed."

24

25 **NEW SECTION. Section 14. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 1].

27

28 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

1

- END -