

SENATE BILL NO. 320

INTRODUCED BY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE BOARD OF NURSING RULEMAKING
5 AUTHORITY TO ESTABLISH QUALIFICATIONS FOR NURSES TO PRACTICE IN PARTICULAR SETTINGS
6 AND TO PERFORM SPECIFIC PROCEDURES; CLARIFYING THE EXISTING AUTHORITY TO ESTABLISH THE
7 SCOPE OF PRACTICE FOR ADVANCED PRACTICE REGISTERED NURSES; AND AMENDING SECTIONS
8 33-22-111, 33-30-1013, 33-31-102, 37-2-101, 37-7-401, 37-8-102, 37-8-202, AND 53-6-101, MCA."

STATEMENT OF INTENT

11 A statement of intent is required for this bill because it grants rulemaking authority to the board of
12 nursing in two areas. The bill authorizes the establishment of qualifications for nurses to practice in
13 particular settings and to perform specific procedures and the use of knowledge not specifically obtained
14 in a basic nursing program. The bill also clarifies rulemaking authority regarding the scope of practice for
15 advanced practice registered nurses.

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

19 Section 1. Section 33-22-111, MCA, is amended to read:

20 **"33-22-111. Policies to provide for freedom of choice of practitioners -- professional practice not**
21 **enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, must
22 provide that the insured person has full freedom of choice in the selection of any licensed physician,
23 physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed
24 social worker, licensed professional counselor, acupuncturist, or ~~nurse specialist~~ advanced practice
25 registered nurse as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and
26 limitations of the person's practice. Whenever the policies insure against the expense of drugs, the insured
27 person has full freedom of choice in the selection of any licensed and registered pharmacist.

28 (2) This section may not be construed as enlarging the scope and limitations of practice of any of
29 the licensed professions enumerated in subsection (1). This section may not be construed as amending,
30 altering, or repealing any statutes relating to the licensing or use of hospitals."

1 **Section 2.** Section 33-30-1013, MCA, is amended to read:

2 **"33-30-1013. Coverage required for services provided by ~~nurse specialists~~ advanced practice**
3 **registered nurses.** A health service corporation shall provide, in group and individual insurance contracts,
4 coverage for health services provided by ~~a~~nurse specialist an advanced practice registered nurse, as
5 specifically listed in 37-8-202(5), if health care services that ~~nurse specialists~~ advanced practice registered
6 nurses are licensed to perform are covered by the contract."

7

8 **Section 3.** Section 33-31-102, MCA, is amended to read:

9 **"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the
10 following definitions apply:

11 (1) "Basic health care services" means:

12 (a) consultative, diagnostic, therapeutic, and referral services by a provider;

13 (b) inpatient hospital and provider care;

14 (c) outpatient medical services;

15 (d) medical treatment and referral services;

16 (e) accident and sickness services by a provider to newborn infant of an enrollee pursuant
17 to 33-31-301(3)(e);

18 (f) care and treatment of mental illness, alcoholism, and drug addiction;

19 (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

20 (h) preventive health services, including:

21 (i) immunizations;

22 (ii) well-child care from birth;

23 (iii) periodic health evaluations for adults;

24 (iv) voluntary family planning services;

25 (v) infertility services; and

26 (vi) children's eye and ear examinations conducted to determine the need for vision and hearing
27 correction;

28 (i) minimum mammography examination, as defined in 33-22-132; and

29 (j) treatment for phenylketonuria. "Treatment" means licensed professional medical services under
30 the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels

1 of phenylalanine and adequate nutritional status.

2 (2) "Commissioner" means the commissioner of insurance of the state of Montana.

3 (3) "Enrollee" means a person:

4 (a) who enrolls in or contracts with a health maintenance organization;

5 (b) on whose behalf a contract is made with a health maintenance organization to receive health
6 care services; or

7 (c) on whose behalf the health maintenance organization contracts to receive health care services.

8 (4) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an
9 enrollee, setting forth the coverage to which the enrollee is entitled.

10 (5) "Health care services" means:

11 (a) the services included in furnishing medical ~~or~~, dental, or nursing care to a person;

12 (b) the services included in hospitalizing a person;

13 (c) the services incident to furnishing medical, ~~or~~ dental, or nursing care or hospitalization; or

14 (d) the services included in furnishing to a person other services for the purpose of preventing,
15 alleviating, curing, or healing illness, injury, or physical disability.

16 (6) "Health care services agreement" means an agreement for health care services between a
17 health maintenance organization and an enrollee.

18 (7) "Health maintenance organization" means a person who provides or arranges for basic health
19 care services to enrollees on a prepaid or other financial basis, either directly through provider employees
20 or through contractual or other arrangements with a provider or a group of providers.

21 (8) "Insurance producer" means an individual, partnership, or corporation appointed or authorized
22 by a health maintenance organization to solicit applications for health care services agreements on its
23 behalf.

24 (9) "Person" means:

25 (a) an individual;

26 (b) a group of individuals;

27 (c) an insurer, as defined in 33-1-201;

28 (d) a health service corporation, as defined in 33-30-101;

29 (e) a corporation, partnership, facility, association, or trust; or

30 (f) an institution of a governmental unit of any state licensed by that state to provide health care,

1 including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

2 (10) "Plan" means a health maintenance organization operated by an insurer or health service
3 corporation as an integral part of the corporation and not as a subsidiary.

4 (11) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist,
5 osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist,
6 or ~~nurse specialist~~ advanced practice registered nurse as specifically listed in 37-8-202 who treats any
7 illness or injury within the scope and limitations of ~~his~~ the provider's practice or any other person who is
8 licensed or otherwise authorized in this state to furnish health care services.

9 (12) "Uncovered expenditures" mean the costs of health care services that are covered by a health
10 maintenance organization and for which an enrollee is liable if the health maintenance organization becomes
11 insolvent."

12

13 **Section 4.** Section 37-2-101, MCA, is amended to read:

14 **"37-2-101. Definitions.** As used in this part, the following definitions apply:

15 (1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy
16 situated within 10 miles of any place at which the medical practitioner maintains an office for professional
17 practice.

18 (2) "Device" means ~~any~~ an instrument, apparatus, or contrivance intended:

19 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans;
20 (b) to affect the structure or any function of the human body of man.

21 (3) (a) "Drug" means ~~any~~ an article:

22 ~~(a)(i)~~ recognized in the official United States Pharmacopoeia/National Formulary or in any
23 supplement to the pharmacopoeia/formulary;

24 ~~(b)(ii)~~ intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~
25 humans;

26 ~~(c)(iii)~~ intended to affect the structure or any function of the human body of man;

27 ~~(d)(iv)~~ intended for use as a component of any article described in ~~subsection (a), (b), or (c) of this~~
28 ~~subsection (3)(a), (3)(b), or (3)(c), but the~~

29 (b) The term does not include any device or any components of a device.

30 (4) "Drug company" means ~~any~~ a person engaged in the manufacturing, processing, packaging,

1 or distribution of drugs; ~~but the~~. The term does not include a pharmacy.

2 (5) "Medical practitioner" means ~~any~~ a person licensed by the state of Montana to engage in the
3 practice of medicine, dentistry, osteopathy, podiatry, optometry, or a advanced practice registered nursing
4 ~~specialty~~, as described in 37-8-202~~45~~, and in the licensed practice ~~to administer~~ of administering or
5 prescribe prescribing drugs.

6 (6) "Person" means ~~any~~ an individual and ~~any~~ or a partnership, firm, corporation, association, or
7 other business entity.

8 (7) "Pharmacy" means an establishment ~~which~~ that engages in the sale of drugs requiring a
9 prescription.

10 (8) "State" means the state of Montana or any political subdivision ~~thereof~~ of the state."

11

12 **Section 5.** Section 37-7-401, MCA, is amended to read:

13 **"37-7-401. Restrictions upon sale or prescription of opiates -- coding prohibited -- refilling
14 prescriptions.** (1) It is unlawful for ~~any~~ a physician, physician assistant-certified, or advanced practice
15 registered nurse ~~specialist~~ to sell or give to or prescribe for ~~any~~ a person any opium, morphine,
16 alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of
17 any of them, except to a patient believed in good faith to require the same for medical use and in quantities
18 proportioned to the needs of the patient.

19 (2) A prescription must be written so that it can be compounded by any registered pharmacist. The
20 coding of any prescription is a violation of this section.

21 (3) A prescription marked "non repetatur", "non rep", or "N.R." ~~cannot~~ may not be refilled. A
22 prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the
23 number of times marked on the prescription. A prescription not bearing any refill instructions may not be
24 refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more
25 than 3 years from the date on which it was originally filled. A narcotic prescription may not be refilled."

26

27 **Section 6.** Section 37-8-102, MCA, is amended to read:

28 **"37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
29 definitions apply:

30 (1) "Advanced practice registered nurse" means a registered professional nurse who has completed

1 educational requirements related to the nurse's specific practice role, in addition to basic nursing education,
2 as specified by the board pursuant to 37-8-202(5)(a).

3 (2) "Board" means the board of nursing provided for in 2-15-1844.

4 (3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

5 (4) "Nursing education program" means any board-approved school that prepares graduates for
6 initial licensure under this chapter. Nursing education programs for:

7 (a) professional nursing may be a department, school, division, or other administrative unit in a
8 senior or junior college or university;

9 (b) practical nursing may be a department, school, division, or other administrative unit in a
10 vocational-technical ~~center~~ program or junior college.

11 (5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

12 (a) "Practice of practical nursing" means the performance for compensation of services requiring
13 basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of
14 nursing procedures. Practical nursing practice ~~utilizes~~ uses standardized procedures in the observation and
15 care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and
16 in the administration of medications and treatments prescribed by a physician, advanced practice registered
17 nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.
18 These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath,
19 or podiatrist authorized by state law to prescribe medications and treatments.

20 (b) "Practice of professional nursing" means the performance for compensation of services requiring
21 substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological
22 sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment,
23 nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health;
24 the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum
25 function. The term also includes administration, teaching, counseling, supervision, delegation, and
26 evaluation of nursing practice and the administration of medications and treatments prescribed by
27 physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law
28 to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to
29 the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

30 (i) "nursing analysis" is the identification of those client problems for which nursing care is

1 indicated and may include referral to medical or community resources;

2 (ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish
3 defined goals."

4

5 **Section 7.** Section 37-8-202, MCA, is amended to read:

6 **"37-8-202. Organization -- meetings -- powers and duties.** (1) The board shall meet annually and
7 shall elect from among the nine members a president and a secretary. The board shall hold other meetings
8 when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The
9 department shall keep complete minutes and records of the meetings and rules and orders promulgated by
10 the board.

11 (2) The board may make rules necessary to administer this chapter. The board shall prescribe
12 standards for schools preparing persons for registration and licensure under this chapter. It shall provide
13 for surveys of schools at times that it considers necessary. It shall approve programs that meet the
14 requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine
15 applicants and issue licenses to and renew licenses of qualified applicants. The board shall conduct hearings
16 on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of
17 nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur
18 necessary expenses for prosecutions.

19 (3) The board may adopt and the department shall publish forms for use by applicants and others,
20 including license, certificate, and identity forms and other appropriate forms and publications convenient
21 for the proper administration of this chapter. The board may fix reasonable fees for incidental services,
22 within the subject matter delegated by this chapter.

23 (4) The board may participate in and pay fees to a national organization of state boards of nursing
24 to ensure interstate endorsement of licenses.

25 (5) (a) The board may define the educational requirements and other qualifications applicable to
26 advanced practice registered nurses. Advanced practice registered nurses are nurses who must have
27 additional professional education beyond the basic nursing degree required of a registered nurse. Additional
28 education must be obtained in courses offered in a university setting or its equivalent. The applicant must
29 be certified by a certifying body for advanced practice registered nurses. Advanced practice registered
30 nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of ~~nurse specialists~~ advanced practice registered nurses. If considered appropriate for ~~a nurse specialist~~ an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

5 (6) The board shall establish a program to assist licensed nurses who are found to be physically
6 or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other
7 drug or substance. The program must provide assistance to licensees in seeking treatment for substance
8 abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall
9 adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

10 (7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed
11 persons.

12 (8) The board may adopt rules establishing additional qualifications for licensed nurses to practice
13 in particular settings and to perform specific procedures. The rules must be directed toward ensuring that
14 a nurse is qualified to practice as a professional nurse or practical nurse in those areas of service that are
15 within the scope of practice of a professional or practical nurse but that involve knowledge not specifically
16 obtained in a basic nursing program. The rules may not expand the scope of the practice of nursing beyond
17 its definition in 37-8-102.

18 (9) The board may adopt rules establishing the scope of practice for advanced practice registered
19 nurses based upon scopes of practice developed by national certifying bodies for advanced practice
20 registered nurses.

{8}(10) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

23

25 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana
26 medicaid program established for the purpose of providing necessary medical services to eligible persons
27 who have need for medical assistance. The Montana medicaid program is a joint federal-state program
28 administered under this chapter and in accordance with Title XIX of the federal Social Security Act, 42
29 U.S.C. 1396, et seq.†, as may be amended. The department of social and rehabilitation services shall
30 administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined
2-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) advanced practice registered nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as defined in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(i) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department so include the following services:

(a) medical care or any other type of remedial care recognized under state law, and furnished by

and practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program
ized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;



- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
- (o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
- (p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

13 (4) Services for persons qualifying for medicaid under the medically needy category of assistance,
14 as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to
15 others qualifying for assistance under the Montana medicaid program. The department is not required to
16 provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the
17 medically needy category of assistance.

18 (5) The department may implement, as provided for in Title XIX of the federal Social Security Act,
19 {42 U.S.C. 1396, et seq.}, as may be amended, a program under medicaid for payment of medicare
20 premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

21 (6) The department may set rates for medical and other services provided to recipients of medicaid
22 and may enter into contracts for delivery of services to individual recipients or groups of recipients.

23 (7) The services provided under this part may be only those that are medically necessary and that
24 are the most efficient and cost-effective.

25 (8) The amount, scope, and duration of services provided under this part must be determined by
26 the department in accordance with Title XIX of the federal Social Security Act, (42 U.S.C. 1396, et seq.),
27 as may be amended.

(9) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

29 (10) If available funds are not sufficient to provide medical assistance for all eligible persons, the
30 department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the

1 medical services made available under the Montana medicaid program.

2 (11) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided
3 in accordance with the provisions of this chapter and the rules adopted under this chapter.

4 (12) Medicaid payment for personal-care facilities may not be made unless the department certifies
5 to the director of the governor's office of budget and program planning that payment to this type of
6 provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

7

8 **NEW SECTION. Section 9. Name change -- directions to code commissioner.** Wherever the term
9 "nurse specialist" appears in legislation enacted by the 1995 legislature, the code commissioner is directed
10 to change the term to "advanced practice registered nurse".

11

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