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INTRODUCED BY Wynn Ryan Khour ^{House} BILL NO. 513

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PRACTICE OF TELEMEDICINE WITHOUT A TELEMEDICINE CERTIFICATE ISSUED BY THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; PROVIDING LEGISLATIVE FINDINGS; PROVIDING A DEFINITION AND EXCEPTIONS; PROVIDING QUALIFICATIONS FOR ISSUANCE OF A TELEMEDICINE CERTIFICATE; PROVIDING POWERS AND DUTIES OF THE BOARD; PROVIDING FOR CERTIFICATE DISCIPLINE AND JURISDICTION OF THE COURTS, THE BOARD, AND THE MONTANA MEDICAL LEGAL PANEL; AMENDING SECTION 37-3-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Legislative findings. The Montana legislature has long found that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing practice patterns, the practice of medicine is occurring with increasing frequency by electronic means across state lines. Although access to technological advances is in the public interest, the legislature also finds that the regulation of the practice of medicine across state lines is necessary to protect the Montana public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who enter the state by means of electronic or other technological means to practice medicine on patients inside Montana, for compensation, are seeking the benefit and protection of the laws of Montana and are therefore subject to the licensure and regulatory requirements provided in [sections 1 through 8].

NEW SECTION. Section 2. Definition -- scope of practice allowed by telemedicine certificate. As used in [sections 1 through 8], "telemedicine":

(1) means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act or transmits, by any means, methods, devices,

1 instrumentalities, information, or an opinion concerning the diagnosis, treatment, or correction of a patient's
 2 condition, ailment, disease, injury, or infirmity, whether physical or mental, into Montana under the
 3 following conditions:

4 (a) the information or opinion is provided for compensation or with the expectation of
 5 compensation;

6 (b) the physician does not limit the physician's services to an occasional case; and

7 (c) the physician has an established or regularly used connection with the state, including but not
 8 limited to:

9 (i) an office or other place for the reception of transmissions from the physician;

10 (ii) a contractual relationship with a person or entity in Montana related to the physician's practice
 11 of medicine; or

12 (iii) privileges in a Montana hospital or other Montana health care facility as defined in 50-5-101;

13 (2) does not mean:

14 (a) an act that is exempt from licensure under 37-3-103; or

15 (b) an informal consultation, made without compensation or expectation of compensation, between
 16 an out-of-state physician and a physician or other health care provider located in Montana.

17

18 **NEW SECTION. Section 3. Practice of telemedicine prohibited without certificate -- scope of**
 19 **practice -- offenses -- penalty.** (1) A physician may not practice telemedicine in this state without a
 20 telemedicine certificate issued pursuant to [sections 1 through 8] or a physician's certificate of licensure
 21 issued pursuant to 37-3-301.

22 (2) A telemedicine certificate authorizes an out-of-state physician to practice telemedicine only with
 23 respect to the specialty in which the physician is board-certified and on which the physician bases the
 24 physician's application for a telemedicine certificate pursuant to [section 5(1)(b)].

25 (3) A telemedicine certificate authorizes an out-of-state physician to practice only telemedicine.
 26 A telemedicine certificate does not authorize the physician to physically enter the state and engage in the
 27 practice of medicine while physically present within the state.

28 (4) A physician who practices telemedicine in this state without a telemedicine certificate issued
 29 pursuant to [sections 1 through 8], in violation of the terms or conditions of that certificate, in violation of
 30 the scope of practice allowed by the certificate, or without a physician's certificate of licensure issued

1 pursuant to 37-3-301 is guilty of a misdemeanor and on conviction may be sentenced as provided in
2 37-3-325.

3

4 **NEW SECTION. Section 4. Application for telemedicine certificate.** A person desiring a
5 telemedicine certificate shall apply to the department and verify the application by oath, in a form prescribed
6 by the board. The application must be accompanied by a certificate fee prescribed by the rules of the board
7 and documents required by the rules of the board necessary to establish that the applicant possesses the
8 qualifications prescribed by [sections 1 through 8] and the rules of the board. The burden of proof is on
9 the applicant, but the department may make an independent investigation to determine whether the
10 applicant possesses the qualifications. The applicant shall provide authorizations required for the release
11 of records and information required to be submitted to the board.

12

13 **NEW SECTION. Section 5. Telemedicine certificate -- basis for denial.** (1) The board may not grant
14 a telemedicine certificate to a physician unless the physician establishes under oath that the physician:

15 (a) has a full, active, unrestricted certificate to practice medicine in another state or territory of the
16 United States or the District of Columbia;

17 (b) is board-certified in a medical specialty pursuant to the standards of, and approved by, the
18 American board of medical specialties or the American osteopathic association bureau of osteopathic
19 specialists;

20 (c) has no history of disciplinary action or limitation of any kind imposed by a state or federal
21 agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

22 (d) is not the subject of a pending investigation by a state medical board or other state or federal
23 agency;

24 (e) has no history of conviction of a crime related to the physician's practice of medicine;

25 (f) has submitted proof of current malpractice or professional negligence insurance coverage in the
26 amount to be set by the rules of the board;

27 (g) has not paid on a claim of professional malpractice or negligence, or had paid on the physician's
28 behalf by any entity, a sum in excess of \$10,000 within the 5 years preceding the physician's application
29 for a telemedicine certificate;

30 (h) has identified an agent for service of process in Montana who is registered with the secretary

1 of state and the board and who may be a physician certified to practice medicine in this state;

2 (i) has tendered an application fee in an amount set by the rules of the board; and

3 (j) has submitted as part of the application form a sworn statement attesting that the physician has
4 read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing
5 the practice of medicine in Montana.

6 (2) A physician certified to practice telemedicine shall renew the telemedicine certificate every 2
7 years, according to the rules of the board.

8 (a) The physician shall complete and return an application for renewal provided by the board by
9 a date established by the rules of the board.

10 (b) The physician shall tender a renewal application fee established by the rules of the board.

11

12 **NEW SECTION. Section 6. Denial of certificate -- discipline of physician certified to practice**
13 **telemedicine.** (1) The board may deny an application for a telemedicine certificate because of:

14 (a) the failure of an applicant to demonstrate that the applicant possesses the qualifications for a
15 certificate required by [sections 1 through 8] and the rules of the board;

16 (b) the failure of an applicant to tender a required fee; or

17 (c) any ground for denial of an application for a physician's certificate of licensure.

18 (2) A physician who does not meet the qualifications for a telemedicine certificate provided in
19 [section 5] may apply for a physician's certificate of licensure in order to practice medicine or telemedicine
20 in Montana.

21

22 **NEW SECTION. Section 7. Discipline of physician with telemedicine certificate.** A physician
23 granted a telemedicine certificate may be subject to investigation and discipline on the grounds that the
24 physician has:

25 (1) failed to maintain the qualifications provided in [section 5] or the rules of the board;

26 (2) committed unprofessional conduct, as described in 37-1-316, or the rules of the board;

27 (3) failed to obtain written informed consent from a Montana patient;

28 (4) failed to maintain complete, legible patient records in written or readily retrievable electronic
29 form;

30 (5) failed to make complete, legible patient records available to the board during an investigation

1 or disciplinary proceedings concerning the physician's practice of telemedicine; or

2 (6) failed to appear and testify at a deposition within the state in the course of an investigation or
3 disciplinary proceeding conducted under Montana law, concerning the physician's practice of telemedicine.

4

5 **NEW SECTION. Section 8. Consent to jurisdiction.** A physician granted a telemedicine certificate
6 is considered to have consented to the jurisdiction of:

7 (1) the courts of Montana for the purposes of civil actions, including but not limited to tort,
8 contract, and equitable actions relating to the physician's practice of telemedicine;

9 (2) the courts of Montana for the purposes of criminal actions relating to the physician's practice
10 of telemedicine;

11 (3) the board for the purposes of licensing and disciplinary action by the board; and

12 (4) the Montana medical legal panel for the purposes of matters within the panel's jurisdiction.

13

14 **Section 9.** Section 37-3-301, MCA, is amended to read:

15 **"37-3-301. License required -- kinds of certificates.** (1) Prior to the issuance of a license, an
16 applicant may not engage in the practice of medicine in this state.

17 (2) The department may issue ~~three~~ four forms of certificates of licensure under the board's seal:
18 the physician's certificate, the restricted certificate, ~~and~~ the temporary certificate, and the telemedicine
19 certificate issued pursuant to [sections 1 through 8]. The physician's certificate and the restricted certificate
20 must be signed by the president, but the temporary certificate and the telemedicine certificate may be
21 signed by any board member. The board shall decide which certificate to issue. These certificates must be
22 designated as:

23 (a) physician's certificate, which is subject to annual registration;

24 (b) restricted certificate; ~~and~~

25 (c) temporary certificate, which is subject to specifications and limitations imposed by the board;

26 and

27 (d) telemedicine certificate."

28

29 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
30 codified as an integral part of Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to

1 [sections 1 through 8].

2

3 NEW SECTION. **Section 11. Effective date.** [This act] is effective October 1, 1998.

4

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0513, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act prohibiting the practice of telemedicine without a telemedicine certificate issued by the Montana State Board of Medical Examiners.

ASSUMPTIONS:

Department of Commerce/POL Bureau:

1. It is estimated that 200 physicians will apply for a telemedicine certificate in Montana after the effective date of October 1, 1998.
2. The processing of applications for the issuance of telemedicine certificates will require a 0.25 FTE licensing technician, grade 9.
3. Operating costs for fiscal year 1999 include administrative rules, printing, postage, advertising and indirect charges. Based on the effective date of this bill, no revenues will be collected nor costs expended in fiscal year 1998.
4. It is projected that the 200 physicians will apply for a telemedicine certificate and pay an original application certificate fee of \$50.
5. It is assumed that the board will have rulemaking authority for the implementation of telemedicine licensure in the state of Montana.
6. It is assumed that no renewal revenue will be collected until at least fiscal year 2000.
7. There is no fiscal impact to the Department of Public Health and Human Services as a result of HB 513.

FISCAL IMPACT:

Department of Commerce

POL Bureau:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	0	0.25
Personal Services	0	5,591
Operating Expenses	<u>0</u>	<u>3,822</u>
Total	0	9,413
<u>Revenues:</u>		
Licensing Fees (02)	0	10,000
<u>Net Impact:</u> (Revenue minus expense)		
Licensing Fees (02)	0	587

TECHNICAL NOTES:

New Section 4, page 3, line 5 and line 11 are inconsistent in that line 5 references "apply to the department" and line 11 references "documents submitted to the board." To be in compliance with HB 518 passed during the last legislative session, the word "board" should be changed to "department."

Regarding Section 5, page 4, line 8 to 9, it should be noted that Section 37-1-101, MCA, authorizes the department not the boards to establish the renewal periods.

Dave Lewis 2-14-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 WILLIAM RYAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0513, as introduced

HB 513