



Economic Affairs Interim Committee

63rd Montana Legislature

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Background regarding 4 Licensing Boards' Medical Assistance Programs

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The purpose of the Medical Assistance Program is to provide a helping hand to a medical professional who faces loss of a license and livelihood if the medical professional is impaired by habitual use of addictive drugs or alcohol or by a debilitating mental or chronic physical illness. The program provides conditions and monitoring assistance for the medical professional who wants to remain licensed (even under probationary conditions) and to overcome addiction or to continue practicing as long as possible with a debilitating mental or physical illness. The program attempts to protect public safety by requiring a medical professional who is in the program to undergo monitoring and to refrain from certain work that could endanger a patient. Depending on the situation, the professional might engage in certain medical practice activities.

The legislature authorized the medical assistance program for physicians in 1987 and later allowed other licensees under the Board of Medical Examiners to participate. The legislature later added the following: nurses in 1989, dentists in 1997, and pharmacists in 2011, although pharmacists had been referred to the program prior to that time.

In 2009-2010 the Economic Affairs Committee studied medical assistance programs at the request of Committee member Rep. Don Roberts, a licensed oral surgeon. Dr. Roberts expressed concerns that the programs may be too lenient in some cases and not lenient enough in other cases. The study involved a subcommittee that heard from members of the four licensing boards referring to the two medical assistance programs, along with representatives of the department and the programs themselves:

- the Montana Assistance Program, which handled cases as assigned by the Board of Nursing and the Board of Pharmacy; and
- the Montana Professional Assistance Program (MPAP), which handled cases as assigned by the Board of Medical Examiners and the Board of Dentistry.

The legislation that resulted from this study, House Bill No. 25:

- made uniform the referral language for each of the boards and required the boards to provide a medical assistance program;
- extended the confidentiality of medical assistance program and health care information to the medical assistance programs created for the four boards in chapters 3 (Board of Medical Examiners), 4 (Board of Dentistry), 7 (Board of Pharmacy), and 8 (Board of Nursing);

- called for a performance audit of the medical assistance programs in each 10-year period. At least once in the 10-year period there was to be an external audit, assessed against the costs of each board. In a subsequent 5-year period the department was to arrange for an internal audit, also assessed against the boards in chapters 3, 4, 7, and 8.
- encouraged use of in-state treatment programs unless the board finds a qualified treatment program is not available in state; and
- provided a "three strikes and you're disciplined" clause, which required discipline to be taken of a licensee who while under contract failed on three separate occasions and returned to using a prohibited or proscribed substance.

Not addressed by the legislation but reviewed by the subcommittee in the 2009-2010 interim were whether:

- to treat licensees who voluntarily enter medical assistance programs differently from licensees ordered to participate in the programs if they want to retain their license. Currently a licensee may enter a program without notifying the board.
- to provide an automatic revocation of a license if the professional is convicted of a felony or loses prescription authority under the Drug Enforcement Agency.

The current issue is being raised because:

- the Department of Labor and Industry requested and received appropriation authority for 3 full-time equivalent positions to begin handling the medical assistance programs in-house;
- there is a question of whether the department has statutory authority to run the program or whether the department, as the agency to which licensing boards are administratively attached, must be asked to handle the program in-house by each of the licensing boards with statutory authority. What happens if not all do?
- there also is a question of whether any board can make referrals to these programs or whether there has to be statutory authority that also provides for confidentiality of the health care information.

The issue involves the theory of administrative attachment and the long history of whether boards have the authority to direct certain activities or whether the department is to handle these activities instead of the boards.

The relevant statutes are:

- 37-1-131 Duties of Boards - subsection (1)(d) specific to chapters 3, 4, 7, or 8.
- 37-2-202 Confidentiality of medical assistance program information and health care information
- 37-3-203 (2) (a) and (b) Powers and Duties of the Board of Medical Examiners.
- 37-3-401 Report of incompetence or unprofessional conduct of licensees of Board of Medical Examiners.
- 37-4-311 Rehabilitation of licensees of the Board of Dentistry
- 37-4-312 Report of incompetence and unprofessional conduct, including intemperate use of drugs or alcohol or impairment due to mental illness or chronic physical illness.
- 37-7-201 Powers and Duties of Board of Pharmacy
- 37-8-202 Powers and Duties of Board of Nursing.