

Unofficial Draft Copy

As of:

**** Bill No. ****

Introduced By *****
of the *****

By Request

Commented [SA1]: Recommended changes by Steve Allen CSG

A Bill for an Act entitled: "An Act providing for regulation and licensure of mental health peer support specialists; establishing licensing requirements; adding a mental health peer support specialist to the board of behavioral health; providing rulemaking authority; and amending sections 2-15-1744, 37-17-104, 37-22-305, and 37-23-201, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Purpose. (1) The legislature finds and declares that because the profession of mental health peer support specialist profoundly affects the lives of people of this state, it is the purpose of [sections 1 through 7] to provide for the common good by:

(a) ensuring the ethical, qualified, and professional practice of mental health peer support; and

(b) instituting an effective mechanism for obtaining accurate public information regarding an applicant's criminal background in order to:

(i) prevent convicted criminal offenders who committed crimes relevant to working with children, the elderly, the mentally ill, or other vulnerable persons from obtaining a Montana mental health peer support specialist license as an attempt to gain access to and perpetrate crimes against new victims; and

(ii) protect the state from claims of negligence.

(2) [Sections 1 through 7] and the rules promulgated by the board under 37-22-201 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of mental health peer support as licensed mental health peer support specialists.

Commented [SA2]: I recommend substituting "behavioral health" here and throughout. We want specialists to work with people with addictions as well as mental illness (preferably both).

Commented [SA3]: Peer support specialists are not typically licensed but receive a "certification" (this "certified" peer support specialists. I recommend substituting "certification" for "license" throughout.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Board" means the board of behavioral health established under 2-15-1744.

(2) "Licensee" means a person licensed under [sections 1 through 7] to provide mental health peer support.

Commented [SA4]: See comments related to "certification" above.

(3) "Mental disorder" has the meaning provided in 53-21-102.

Commented [SA5]: I recommend substituting "behavioral health disorder" for reasons above. Is there a current statutory definition for this? If not, we can help craft one.

(4) "Mental health peer support" means the use of a licensee's personal experience with a mental disorder to provide support, mentoring, guidance, advocacy and offer hope to individuals with mental disorders.

Commented [SA6]: Behavioral health

(5) "Mental health peer support specialist" means a person who has:

(a) experienced and is in recovery from a mental disorder; and

(b) obtained the education and skills needed to provide therapeutic support to individuals with mental disorders.

© possesses a valid and current certification.

(6) "Mental health professional" means:

- (a) a physician licensed under Title 37, chapter 3;
- (b) a psychologist licensed under Title 37, chapter 17;
- (c) a social worker licensed under Title 37, chapter 22;
- (d) a professional counselor licensed under Title 37, chapter

23; or

(e) an advanced practice registered nurse, as provided for in

37-8-202, with a clinical specialty in psychiatric mental health nursing.

NEW SECTION. **Section 3. License required -- exceptions.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed mental health peer support specialist" or "mental health peer support specialist".

Commented [SA7]: Certification (per above)

Commented [SA8]: certified

Commented [SA9]: behavioral health

~~(2) Except as provided in subsection (3), a person may not represent that the person is a licensed mental health peer support specialist by adding the letters "LMHPSS" after the person's name or by any other means unless the person is licensed under [sections 1 through 7].~~

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Commented [SA10]: I don't know of a practice among peer support specialists of using "professional" type acronyms. I wouldn't recommend that practice. Peers are intended to be just that, "peers". While training is important, their life experience in learning to manage their behavioral health disorders is the primary training. Licensed health professional training and licensure is a much different process. I would discourage much alignment.

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(3) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, psychologist, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, clinical social worker licensed pursuant to Title 37, chapter 22, clinical professional counselor licensed pursuant to Title 37, chapter 23, addiction counselor licensed pursuant to Title 37, chapter 35, or marriage and family therapist licensed pursuant to Title 37, chapter 37, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by **title** that the person is engaging in the practice of mental health peer support;

Commented [SA11]: This is fine. "behavioral health" per above

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the

aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence; or

(g) an activity or service of a person who is working to satisfactorily complete the supervised work experience required by [section 4] if the person has already completed the training course required by [section 4].

NEW SECTION. Section 4. License requirements -- fees. (1) A person may apply for licensure as a mental health peer support specialist if the person has:

Commented [SA12]: certification

(a) received a high school diploma or the equivalent of a high school diploma; and

(b) attested to the fact that the person:

(i) has been diagnosed by a mental health professional as having a mental disorder;

(ii) has received treatment; and

(iii) is in recovery as defined by rule from a mental disorder.

(2) An applicant shall submit a written application on a form provided by the department and an application fee in an amount established by the board by rule.

(a) a training course in mental health peer support as defined by the board by rule;

(b) supervised work experience in mental health peer support as provided for by the board by rule; and

(c) a competency **examination** determined by the board to adequately assess a person's ability to provide mental health peer support.

Commented [SA13]: I would steer clear of the "competency" language here. Competency has a very specific meaning in mental health and use here is not necessary or appropriate. Suggest something along the lines of "verify ability to perform all essential functions of the certified peer support role through the application and certification process as provided for by the board by rule"

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~~(4) An applicant who fails the examination may reapply to take the examination.~~

~~(5) The supervised work **experience** required under this section may be gained through a program:~~

Commented [SA14]: Most people we would want in these positions won't have prior related work experience (at least in the beginning). I do think it would be very helpful to have some qualifying experience and training for people who supervise peer support specialists. They should minimally go through the same training as those being certified and complete additional training (as determined by the board)

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~~(a) defined by the board by rule;~~

~~(b) approved by the board; or~~

~~(c) determined by the board to be recognized under the laws of another state.~~

(6) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(7) Pursuant to 37-1-203, an applicant who has a history of criminal convictions has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust. The board may deny the license if it determines that the applicant is not sufficiently **rehabilitated**.

Commented [SA15]: I think this is good. Just keeping in mind, though, that it may be that some of the best people for working with justice involved individuals may be rehabilitated peers. I think the earlier language gives sufficient guidance that the primary concern is individuals who put children and vulnerable adults at risk.

NEW SECTION. Section 5. Temporary practice permits. ~~(1) Except as provided in subsection (4), an applicant who has completed all licensure requirements except the supervised work experience may apply for a temporary practice permit that authorizes the applicant to complete the supervised work experience.~~

Commented [SA16]: This section shouldn't be needed for peers. We are only talking about a week or two of training and no supervised work experience (unlike licensed professionals).

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~~(2) The board shall issue a temporary practice permit if it determines that:~~

~~(a) the applicant has completed an application as required by [section 4];~~

~~(b) an initial screening shows no current disciplinary action against the applicant in Montana or another state; and~~

~~(c) the applicant has completed all educational requirements of [sections 1 through 7].~~

~~(3) A person providing mental health peer support under a temporary practice permit may practice only:~~

~~(a) under the supervision of a person who is trained in mental health peer support or a related field as defined by the board by rule and who has an active license in good standing in Montana or another state; and~~

~~(b) for an amount of time as established by the board by rule.~~

~~(4) The provisions of this section do not apply until the board has adopted rules implementing this section. The rules must provide for a waiver of the provisions of this section for a person who is engaged in a supervised work experience prior to the adoption of the rules.~~

NEW SECTION. **Section 6. Privileged communications -- exceptions.** A licensee may not disclose any information the licensee acquires from an individual to whom the licensee provides mental health peer support except:

(1) with the written consent of the individual or, in the case of the individual's death or mental incapacity, with the written consent of the individual's personal representative or guardian;

(2) when a communication that otherwise would be confidential reveals that the individual or another person is contemplating commission of a crime or in the licensee's professional opinion reveals a threat of imminent harm to the individual or others;

(3) that if the individual is a minor and information acquired by the licensee indicates that the minor was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;

(4) that if the individual or the individual's personal representative or guardian brings an action against a licensee for a claim arising out of the licensee's

Commented [SA17]: I would add a new #1 here and the others would remain subsequent.

(1) Certified peer support specialists work in healthcare teams. Communication essential for the supported individual's recovery among identified team as defined and established by the board by rule is required and supported.

Could get around the need for this language by having everyone sign releases (and people with licenses will likely want the release in any case) but this language can help shortcut any concerns or barriers to needed open communication among the teams. The other items here should stay.

professional relationship with the individual, the individual is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the individual; and

(6) as may otherwise be required by law.

NEW SECTION. Section 7. Misdemeanor violations -- penalties. 8 LC j10A

(1) It is a misdemeanor for a person to knowingly:
~~(a) engage in the practice of mental health peer support without~~
~~a license except as allowed under a temporary practice permit;~~ (b) represent that the person is a licensed mental health peer support specialist without being licensed under [sections 1 through

7];

(c) obtain or attempt to obtain a license or license renewal by

bribery or fraudulent representation; (d) make a false statement on any form used by the board to

implement [sections 1 through 7] or the rules adopted under [sections 1 through 7]; or

(e) violate the provisions of [section 6].

(2) A person convicted under this section shall be fined not more than \$500 or imprisoned in the county jail for a period not to exceed 6 months, or both. A person convicted of any subsequent offense under this section shall be punished by both a fine and imprisonment.

Section 8. Section 2-15-1744 , MCA, is amended to read:

"2-15-1744. Board of behavioral health. (1) (a) The governor shall appoint, with the consent of the senate, a board of behavioral health consisting of nine 10 members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors. At least one of these members who is licensed as a social worker or

Commented [SA18]:

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Commented [SA19]: This is good (but with the changes in terms)

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professional counselor must also be licensed as a marriage and family therapist.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) Two members must be licensed addiction counselors.

(e) One member must be a licensed mental health peer support specialist.

(2) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

(3) Members shall serve staggered 4-year terms."

{*Internal References to 2-15-1744:*

37-22-102 37-23-102 37-35-102 37-37-102 }

Section 9. Section 37-17-104 , MCA, is amended to read:

"37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution; (c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting

psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person's residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

(f) the offering of lecture services; and

(g) the offering of mental health peer support as defined in [section 2].

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of behavioral health shall adopt rules that qualify a licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers and professional counselors must be consistent with the guidelines of their respective national associations. A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules."

{ Internal References to 37-17-104: None. }

Section 10. Section 37-22-305 , MCA, is amended to read:

"37-22-305. Representation to public as licensed clinical social worker -- limitations on use of title -- limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the

letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

(b) activities, services, and use of an official title by a person in the employ of or under a contract with a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services by a person who is not a resident of this state that are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activities and services. However, the person shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within

90 days of taking up residency in this state, and is licensed to perform the activities and services in the state of former residence; or

(g) activities or services of a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate; or

(h) the offering of mental health peer support as defined in [section 2]."

{ *Internal References to 37-22-305: None.* }

Section 11. Section 37-23-201 , MCA, is amended to read:

"37-23-201. Representation or practice as licensed clinical professional counselor -- license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of

ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics

of the person's profession; or (i) the offering of
mental health peer support as defined in

[section 2]."

{*Internal References to 37-23-201:*

20-4-502 20-9-327 37-23-311 }

NEW SECTION. Section 12. {standard} Codification instruction. [Sections 1
through 7] are intended to be codified as an integral part
of Title 37, and the provisions of Title 37 apply to
[sections 1 through 7].

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{Name : Title : Agency : Phone :

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