

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

Summary: This bill:

- *Allows PAs, physicians, practices, healthcare facilities and hospitals to determine how PAs and physicians practice together*
- *Requires PAs to collaborate, consult with and/or refer to the appropriate member(s) of the health care team as indicated by the patient's condition and the competencies of the PA and the standard of care.*
- *Allows PAs to bill public and private insurers directly for medical services provided by the PA and direct or assign payment to the PA's employer.*
- *Eliminates the statutory requirement that PAs have an agreement with a specific physician in order to practice.*
- *Removes mandate for single physician medical legal responsibility of PAs.*
- *PAs assume medical legal responsibility for the care they provide.*
- *Supports continued team-based practice, while improving parity with other Allied Health Professions*

1 LEGISLATIVE INTENT

2 As a matter of public policy, the ability to practice as a physician assistant (PA) is a privilege granted by
3 the people of the State acting through their elected representatives by their adoption of the PA Practice
4 Act. It is not a natural right of individuals. Therefore, in the interests of public health, safety and welfare,
5 and to protect the public from the unprofessional, improper, incompetent, unlawful, fraudulent, and/or
6 deceptive practice of PAs, it is necessary to provide laws and regulations to govern the granting and
7 subsequent use of the privilege to practice as a PA and to ensure, as much as possible, that only
8 qualified and fit persons hold that privilege. The board's primary responsibility and obligation is to
9 protect the public, and any license issued pursuant to this statute shall be a revocable privilege and no
10 holder of such a privilege shall acquire thereby any irrevocable right. Also as a matter of public policy
11 and in the interests of public health, safety and welfare, this Act intends to authorize practice by
12 licensed PAs in a manner that enhances access to healthcare for the people of the State.

13 ~~37-20-101.—Qualifications of supervising physician and physician assistant. (1) The supervising~~
14 ~~physician named in the supervision agreement required by 37-20-301 shall:~~

15 ~~(a) possess a current, active license to practice medicine in this state; and~~

16 ~~(b) exercise supervision over the physician assistant in accordance with the rules adopted by the board~~
17 ~~and retain professional and legal responsibility for the care and treatment of patients by the physician~~
18 ~~assistant.~~

19 ~~(2) A physician assistant named in the supervision agreement required by 37-20-301 must have a~~
20 ~~current, active Montana physician assistant license.~~

21 **37-20-104. Unlicensed practice -- penalties.** (1) A person who employs a physician assistant or holds
22 out to the public that the person_ is a physician assistant without having been issued a Montana
23 physician assistant license is guilty of a misdemeanor and is punishable as provided in [46-18-212](#). Any

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

24 person not licensed under this Act is guilty of a misdemeanor if he or she uses any combination or
25 abbreviation of the term "physician assistant" to indicate or imply that he or she is a PA.

26 A person who meets the qualifications for licensure under this chapter but does not possess a current
27 license may use the title "PA" or "physician assistant" but may not act or practice as a PA unless
28 licensed under this chapter.

29 (2) Prior to being issued a license ~~and submitting a supervision agreement to the board~~, a physician
30 assistant may not practice as a physician assistant in this state, ~~even under the supervision of a licensed~~
31 ~~physician.~~

32 (3) The board may enforce the provisions of this section by the remedy of injunction and the
33 application of other penalties as provided by law.

34 ~~37-20-301.—Requirements for use of physician assistant—supervision agreement—duties and~~
35 ~~delegation agreement—content—approval—filing.~~ (1) A physician, office, firm, state institution, or
36 professional service corporation may not employ or make use of the services of a physician assistant in
37 the practice of medicine, as defined in ~~37-3-102~~, and as provided in this chapter and a physician
38 assistant may not be employed or practice as a physician assistant unless the physician assistant:

39 ~~(a) is supervised by a physician licensed in this state;~~

40 ~~(b) is licensed by the board;~~

41 ~~(c) has submitted a physician assistant supervision agreement to the board on a form prescribed by~~
42 ~~the department; and~~

43 ~~(d) has paid to the board the applicable fees required by the board.~~

44 ~~(2) A supervising physician and the supervised physician assistant shall execute a duties and delegation~~
45 ~~agreement constituting a contract that defines the physician assistant's professional relationship with~~
46 ~~the supervising physician and the limitations on the physician assistant's practice under the supervision~~
47 ~~of the supervising physician. The agreement must be kept current, by amendment or substitution, to~~
48 ~~reflect changes in the duties of each party occurring over time. The board may by rule specify other~~
49 ~~requirements for the agreement. A physician assistant licensed by the board before October 1, 2005,~~
50 ~~shall execute a duties and delegation agreement with a supervising physician by October 1, 2006.~~

51 ~~(3) A physician assistant and the physician assistant's supervising physician shall keep the supervision~~
52 ~~agreement and the duties and delegation agreement at their place of work and provide a copy upon~~
53 ~~request to a health care provider, a health care facility, a state or federal agency, the board, and any~~
54 ~~other individual who requests one.~~

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DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

56 **37-20-303. Exemptions from licensure requirement.** (1) This chapter does not prohibit or require a
57 license as a physician assistant for the rendering of medical or medically related services if the service
58 rendered is within the applicable scope of practice for any of the following individuals:

59 (a) a physician assistant providing services in an emergency or catastrophe, as provided in [37-20-410](#);

60 (b) a federally employed physician assistant;

61 (c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a
62 medication aide licensed or authorized pursuant to Title 37, chapter 8;

63 (d) a student physician assistant when practicing in a hospital or clinic in which the student is training;

64 (e) a physical therapist licensed pursuant to Title 37, chapter 11;

65 (f) a medical assistant, as provided in [37-3-104](#);

66 (g) an emergency medical technician licensed pursuant to Title 50, chapter 6; or

67 (h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide
68 when licensed or authorized pursuant to laws of this state.

69 (2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant
70 may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to
71 believe that the individual is a physician assistant.

72 **37-20-401. Definitions.** As used in this chapter, the following definitions apply:

73 (1) "Board" means the Montana state board of medical examiners established in [2-15-1731](#).

74 (2) "~~Duties and delegation~~ [Collaborative](#) Agreement" means a written ~~contract~~ [agreement](#) between
75 ~~the supervising~~ [a collaborating](#) physician and the physician assistant [or the PA and the PA's employer.](#)
76 ~~that meets the requirements of 37-20-301.~~

77 (3) "Physician assistant" [or PA](#) means a ~~member of a health care team, licensed by the board, who~~
78 ~~provides medical services that may include but are not limited to examination, diagnosis, prescription of~~
79 ~~medications, and treatment under the supervision of a physician licensed by the board.~~ [healthcare](#)
80 [professional who meets the qualifications defined in this chapter and is licensed to practice medicine](#)
81 [as provided in this chapter.](#)

82 (4) "~~Supervising~~ physician" means a medical doctor or doctor of osteopathy licensed by the board ~~who~~
83 ~~agrees to a supervision agreement and a duties and delegation agreement.~~

84 ~~(5) "Supervision agreement" means a written agreement between a supervising physician and a~~
85 ~~physician assistant providing for the supervision of the physician assistant.~~

86 (5) “Collaborating Physician(s)” means a physician who collaborates with a PA who must:

87 1) Be licensed in this state;

88 2) Be free from any restriction on his or her ability to collaborate with a PA that has been
89 imposed by board disciplinary action.

90 (6) “Collaboration” means the process in which PAs and physicians jointly contribute to the healthcare
91 and medical treatment of patients. Collaboration shall be continuous but shall not be construed to
92 require the physical presence of the physician at the time and place that services are rendered.

93

94 **37-20-402. ~~Criteria~~ Qualifications for ~~licensing~~ licensure as a physician assistant. ~~A person may not be~~
95 ~~licensed as a physician assistant in this state unless the person:~~**

96 ~~(1) is of good moral character;~~

97 ~~(2) is a graduate of a physician assistant training program accredited by the accreditation review~~
98 ~~commission on education for the physician assistant or, if accreditation was granted before 2001,~~
99 ~~accredited by the American medical association's committee on allied health education and~~
100 ~~accreditation or the commission on accreditation of allied health education programs; and~~

101 ~~(3) has taken and passed an examination administered by the national commission on the certification~~
102 ~~of physician assistants.~~

103 Except as otherwise provided in this chapter, an individual shall be licensed by the board before the
104 individual may practice as a PA.

105 The board may grant a PA license to an applicant who:

106 1) submits an application on forms approved by the board;

107 2) pays the appropriate fee as determined by the board;

108 3) has successfully completed an educational program for PAs accredited by the Accreditation
109 Review Commission on Education for the Physician Assistant, or prior to 2001, either by the
110 Committee on Allied Health Education and Accreditation, or the Commission on Accreditation
111 of Allied Health Education Programs;

112 4) has passed the Physician Assistant National Certifying Examination administered by the
113 National Commission on Certification of Physician Assistants;

114 5) is mentally and physically able to engage safely in practice as a PA;

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

115 6) has no license as a PA under current discipline, revocation, suspension or probation for cause
116 resulting from the applicant's practice as a PA, unless the board considers such condition and
117 agrees to licensure;

118 7) is of good moral character; and

119 8) submits to the board any other information the board deems necessary to evaluate the
120 applicant's qualifications.

121 The board may also grant a license to an applicant who does not meet the educational requirement
122 specified in subsection three, but who passed the Physician Assistant National Certifying Examination
123 administered by the National Commission on Certification of Physician Assistants prior to 1986.

124
125 ~~37-20-403. Physician assistant as agent of supervising physician—degree of supervision required—~~
126 ~~scope of practice. (1) A physician assistant is considered the agent of the supervising physician with~~
127 ~~regard to all duties delegated to the physician assistant and is professionally and legally responsible for~~
128 ~~the care and treatment of a patient by a physician assistant licensed in accordance with this chapter. A~~
129 ~~health care provider shall consider the instructions of a physician assistant as being the instructions of~~
130 ~~the supervising physician as long as the instructions concern the duties delegated to the physician~~
131 ~~assistant.~~

132 ~~(2)—Onsite or direct supervision of a physician assistant by a supervising physician is not required if the~~
133 ~~supervising physician has provided a means of communication between the supervising physician and~~
134 ~~the physician assistant or an alternate means of supervision in the event of the supervising physician's~~
135 ~~absence.~~

136 ~~(3)—A physician assistant may diagnose, examine, and treat human conditions, ailments, diseases,~~
137 ~~injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality~~
138 ~~authorized by the supervising physician.~~

139 Scope of Practice.

140 PAs may provide any legal medical service for which they have been prepared by their education,
141 training and experience and are competent to perform. Medical and surgical services provided by PAs
142 include but are not limited to: (i) obtaining and performing comprehensive health histories and
143 physical examinations, (ii) evaluating, diagnosing, managing, and providing medical treatment, (iii)
144 ordering, performing and interpreting diagnostic studies and therapeutic procedures, (iv) educating
145 patients on health promotion and disease prevention, (v) providing consultation upon request and (vi)
146 writing medical orders. PAs may obtain informed consent. PAs may supervise, delegate and assign
147 therapeutic and diagnostic measures to licensed or unlicensed personnel. Consistent with the scope of
148 practice as previously described, PAs may certify the health or disability of a patient as required by

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

149 any local, state or federal program. A PA may authenticate any document with their signature,
150 certification, stamp, verification, affidavit or endorsement if it may be so authenticated by the
151 signature, certification, stamp, verification, affidavit or endorsement of a physician.

152 Requirements for Physician Assistant Practice- A physician assistant in the practice of medicine as
153 defined in 37-3-102 shall collaborate with, consult with and/or refer to the appropriate member(s) of
154 the healthcare team as indicated by the patient's condition, the education, experience and
155 competencies of the PA and the standard of care. The degree of collaboration shall be determined by
156 the practice which may include decisions made by the employer, group, hospital service, and the
157 credentialing and privileging systems of licensed facilities.

158 Additionally:

- 159 1) A Collaborative Agreement is not required for a physician assistant practicing in any medical
160 facility that has an established credentialing and privileging process consistent with CMS
161 Conditions of Participation 42 CFR § 482.12 or that of an accrediting organization, a physician-
162 owned facility or practice, a Federally Qualified Health Center, correctional facilities, state,
163 county or city health departments or any other facility or practice approved by the board.
164 2) Except as provided in subsection 1, a physician assistant with less than four thousand hours of
165 practice as a licensed physician assistant shall execute a Collaborative Agreement that a. is
166 between a collaborating physician and a physician assistant with less than four thousand
167 hours of practice; b. describes how collaboration must occur; and c. kept on file at the practice
168 and shall be available to the board upon request.

169 The physician assistant will assume professional and legal responsibility for the care provided by the
170 physician assistant.

171

172 **37-20-404. Prescribing and dispensing authority -- ~~discretion of supervising physician on limitation of~~**
173 **~~authority. (1) A physician assistant may prescribe, dispense, and administer drugs to the extent~~**
174 **~~authorized by the supervising physician.~~**

175 Pursuant to the requirements of Section 37-20-403, a PA may prescribe, dispense, order, administer
176 and procure drugs and medical devices. PAs may plan and initiate a therapeutic regimen that includes
177 ordering and prescribing non-pharmacological interventions, including but not limited to, durable
178 medical equipment, nutrition, blood and blood products, and diagnostic support services including,
179 but not limited to, home healthcare, hospice and physical and occupational therapy.

180 Prescribing and dispensing of drugs may include Schedule II through V substances as described in Title
181 50, Chapter 32 and all legend drugs.

182 All dispensing activities of PAs shall:

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

- 183 1) comply with appropriate federal and state regulations;
184 2) occur when pharmacy services are not reasonably available, or when it is in the best interest
185 of the patient, or when it is an emergency; and
186 3) include any medications that may be dispensed by a physician.

187 PAs may request, receive and sign for professional samples. PAs may distribute professional samples
188 to patients.

189 PAs who prescribe and/or dispense controlled substances must register with the federal Drug
190 Enforcement Administration [and any applicable state controlled substance regulatory authority].

191 (2) All dispensing activities allowed by this section must comply with [37-2-104](#) and with packaging and
192 labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

193 ~~(3) The prescribing and dispensing authority granted a physician assistant may include the following:~~

194 ~~(a) Prescribing, dispensing, and administration of Schedule III drugs listed in [50-32-226](#), Schedule IV~~
195 ~~drugs listed in [50-32-229](#), and Schedule V drugs listed in [50-32-232](#) is authorized.~~

196 (b) Prescribing, dispensing, and administration of Schedule II drugs listed in [50-32-224](#) may be
197 authorized for limited periods not to exceed 34 days.

198 (c) Records on the dispensing and administration of scheduled drugs must be kept.

199 ~~(d) A physician assistant shall maintain registration with the federal drug enforcement administration if~~
200 ~~the physician assistant is authorized by the supervising physician to prescribe controlled substances.~~

201 (e) A prescription written by a physician assistant must comply with regulations relating to prescription
202 requirements adopted by the board of pharmacy.

203 **37-20-405. Billing Coverage of Services.** A ~~supervising physician,~~ medical office, firm, institution, or
204 other entity may bill for a service provided by a ~~supervised~~ physician assistant. Payment for services
205 within the PA's scope of practice shall be made when ordered and/or performed by a PA, if the same
206 service would have been covered if ordered and/or performed by a physician. Payment for services
207 shall be based on the service provided and not on the health professional who delivered the service.
208 PAs must be authorized to bill for and receive direct payment for the medically necessary services they
209 deliver.

210 To ensure accountability and transparency for patients, payers and the healthcare system, PAs must
211 also be identified as the rendering professional in the billing and claims process when they deliver
212 medical or surgical services to patients.

213 *No insurance company or third-party payer shall impose a practice, education or collaboration*
214 *requirement that is inconsistent with or more restrictive than existing PA state law or regulation.*

215

216 **37-20-410. Participation in disaster and emergency care -- liability of physician assistant ~~and~~**
217 **~~supervising physician.~~** (1) A physician assistant licensed in this state, licensed or authorized to practice
218 in another state, territory, or possession of the United States, or credentialed as a physician assistant by
219 a federal employer who provides medical care in response to an emergency or a federal, state, or local
220 disaster may ~~provide that care either without supervision as required by this chapter or with whatever~~
221 ~~supervision is available.~~ *render such care that they are able to provide.*

222 ~~The provision of care allowed by this subsection is limited to the duration of the emergency or disaster.~~

223 ~~(2)—A physician who supervises a physician assistant providing medical care in response to an~~
224 ~~emergency or disaster as described in subsection (1) need not comply with the requirements of this~~
225 ~~chapter applicable to supervising physicians.~~

226 (2) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in
227 the ordinary course of employment or practice renders emergency medical care during an emergency or
228 disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an
229 act or omission ~~in providing that care if the injury is caused by simple or ordinary negligence and if the~~
230 ~~care is provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's~~
231 ~~office where those services are normally provided.~~ *which may constitute ordinary negligence. The*
232 *immunity granted by this section shall not apply to acts or omissions constituting gross, willful or*
233 *wanton negligence.*

234 ~~(4)—A physician who supervises a physician assistant voluntarily and gratuitously providing emergency~~
235 ~~care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal~~
236 ~~injury resulting from an act or omission in supervising the physician assistant if the injury is caused by~~
237 ~~simple or ordinary negligence on the part of the physician assistant providing the care or on the part of~~
238 ~~the supervising physician.~~

239 **37-20-411. Unlawful acts.** A person who performs acts constituting the practice of medicine in this
240 state acts unlawfully if the person:

241 (1) has not been issued a license pursuant to this chapter and is not exempt from the licensing
242 requirement of this chapter; ~~or~~

243 ~~(2)—has received a license pursuant to this chapter but has not completed a duties and delegation~~
244 ~~agreement or a supervision agreement.~~

245 *IDENTIFICATION REQUIREMENTS*

DRAFT 2019 LEGISLATION RELATED TO THE PRACTICE OF PHYSICIAN ASSISTANTS

246 *PAs licensed under this Act shall identify themselves as a "PA" or "physician assistant" when engaged*
247 *in professional activities requiring a PA license.*

248

249 *PRIMARY CARE PROVIDER*

250 *Notwithstanding any other provision of law or regulation, a PA shall be considered to be a primary*
251 *care provider when the PA is practicing in the medical specialties required for a physician to be a*
252 *primary care provider.*

253

254 *REENTRY TO CLINICAL PRACTICE*

255 *The board may make special provisions for licensure of an applicant who has been clinically inactive*
256 *for greater than 24 months. These provisions shall be contained in an individual reentry plan that is*
257 *agreed to by the board or its representative and the applicant for licensure. Similar provisions may be*
258 *required of applicants for license renewal who have been clinically inactive for greater than 24*
259 *months. PAs who have been full-time employees of accredited PA educational programs will not be*
260 *considered to have been clinically inactive for the purpose of licensure or license renewal.*

261