

1 SENATE BILL NO. 5

2 INTRODUCED BY D. GRIMES

3 BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT ONLY THE DATA OF INHOSPITAL PEER
6 REVIEW COMMITTEES IS PROTECTED FROM DISCLOSURE TO A PATIENT AND THAT A PATIENT HAS
7 ACCESS TO THE PATIENT'S HEALTH CARE INFORMATION; AND AMENDING SECTIONS 50-16-203 AND
8 50-16-542, MCA."

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10 WHEREAS, in *Huether v. District Court of the Sixteenth Judicial District*, 2000 MT 158, 4 P.3d
11 1193, 57 St. Rep. 647 (2000), the Montana Supreme Court determined that the denial of patient access
12 to health care information under section 50-16-542(1)(d), MCA, conflicts with the interpretation of the
13 in-hospital peer review statutes that only allow data to be protected from disclosure.

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

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17 **Section 1.** Section 50-16-203, MCA, is amended to read:

18 **"50-16-203. Committee information data and proceedings confidential and privileged.** All such
19 records, ~~and data, and information shall be referred to in 50-16-202~~ are confidential and privileged to ~~said~~
20 an in-hospital medical staff committee and the members ~~thereof of the committee~~, as though ~~such the~~
21 hospital patients were the patients of the members of ~~such the~~ committee. All proceedings and in-hospital
22 records and reports of ~~such~~ medical staff committees ~~shall be~~ are confidential and privileged."

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24 **Section 2.** Section 50-16-542, MCA, is amended to read:

25 **"50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to
26 health care information by a patient if the health care provider reasonably concludes that:

27 (a) knowledge of the health care information would be injurious to the health of the patient;

28 (b) knowledge of the health care information could reasonably be expected to lead to the patient's
29 identification of an individual who provided the information in confidence and under circumstances in
30 which confidentiality was appropriate;

1 (c) knowledge of the health care information could reasonably be expected to cause danger to the
2 life or safety of any individual;

3 (d) the health care ~~information~~ data, as defined in 50-16-201, was compiled and is used solely
4 for litigation, quality assurance, peer review, or administrative purposes;

5 (e) the health care information might contain information protected from disclosure pursuant to
6 50-15-121 and 50-15-122;

7 (f) the health care provider obtained the information from a person other than the patient; or

8 (g) access to the health care information is otherwise prohibited by law.

9 (2) Except as provided in 50-16-521, a health care provider may deny access to health care
10 information by a patient who is a minor if:

11 (a) the patient is committed to a mental health facility; or

12 (b) the patient's parents or guardian has not authorized the health care provider to disclose the
13 patient's health care information.

14 (3) If a health care provider denies a request for examination and copying under this section, the
15 provider, to the extent possible, shall segregate health care information for which access has been denied
16 under subsection (1) from information for which access cannot be denied and permit the patient to
17 examine or copy the information subject to disclosure.

18 (4) If a health care provider denies a patient's request for examination and copying, in whole or
19 in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record
20 by the patient's spouse, adult child, or parent or guardian or by another health care provider who is
21 providing health care services to the patient for the same condition as the health care provider denying the
22 request. The health care provider denying the request shall inform the patient of the patient's right to
23 select another health care provider under this subsection."

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