

1 SENATE BILL NO. 385

2 INTRODUCED BY ESP

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE ROLE, DUTIES, AND TITLE OF THE MENTAL
 5 HEALTH OMBUDSMAN TO INCLUDE FAMILIES IN THE CHILD PROTECTIVE SERVICES SYSTEM;
 6 SPECIFYING THE RIGHTS OF THE OMBUDSMAN WITH REGARD TO THE RECEIPT OF PROTECTED
 7 CONFIDENTIAL AND HEALTH CARE INFORMATION AND RECORDS REGARDING REPORTS OF CHILD
 8 ABUSE AND NEGLECT; PROVIDING THAT THE OMBUDSMAN IS A HEALTH OVERSIGHT AGENCY;
 9 PROVIDING FOR SETTING PRIORITIES; AND AMENDING SECTIONS 2-15-210, 41-3-205, 50-16-530,
 10 50-16-603, AND 53-21-166, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
 14 **Section 1.** Section 2-15-210, MCA, is amended to read:

15 **"2-15-210. Mental health and family ombudsman.** (1) There is a mental health and family
 16 ombudsman. The ombudsman must be appointed by the governor for a term of 4 years. The ombudsman is
 17 attached to the office of the governor for administrative purposes only, as provided in 2-15-121. The ombudsman
 18 may employ staff to carry out the duties provided in this section.

19 (2) The ombudsman shall provide an annual report to the governor and to the legislature, as required
 20 by 5-11-210, and may include recommendations regarding the mental health system and the child protective
 21 services system, as provided in Title 41, chapter 3.

22 (3) The ombudsman shall represent the interests of individuals with regard to the need for public mental
 23 health services, including individuals in transition from public to private services. The ombudsman may not
 24 provide a legal advocacy service.

25 (4) ~~The ombudsman shall represent the interests of children, ASSIST immediate and extended family~~
 26 ~~members; and child custodians with regard to allegations of harm by the state as it carries out its responsibilities,~~
 27 ~~as provided for in Title 41, chapter 3. If it is necessary to materially address allegations of harm and the person~~
 28 ~~alleging the harm has used the department grievance procedure without satisfactory resolution, then the~~
 29 ~~ombudsman is authorized to communicate privately with any child under protective services. The ombudsman~~
 30 ~~is authorized to communicate with anyone working with the child, to work with guardians ad litem and~~

1 ~~court-appointed special advocates, and to interact with the system of care provided for in Title 52, chapter 2, part~~
 2 ~~3, and with any of the statutory teams providing youth services listed in 52-2-304~~ IN THEIR INTERACTIONS WITH THE
 3 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, INCLUDING ANY COMPLAINTS OR GRIEVANCES THEY HAVE
 4 AGAINST THE DEPARTMENT WITH REGARD TO THE DEPARTMENT'S RESPONSIBILITIES UNDER TITLE 41, CHAPTER 3.

5 (5) The duties of the ombudsman include:

6 (a) ~~receiving and investigating allegations~~ COMPLAINTS REGARDING THE PUBLIC MENTAL HEALTH SYSTEM;

7 (b) investigating THE PUBLIC MENTAL HEALTH SYSTEM on the ombudsman's own motion;

8 (c) ~~recommending corrective action as it pertains to the public mental health system;~~

9 (d) ~~recommending systemic changes IN THE PUBLIC MENTAL HEALTH SYSTEM AND IN THE AGENCIES CHARGED~~
 10 WITH THE PREVENTION, IDENTIFICATION, AND TREATMENT OF CHILD ABUSE AND NEGLECT;

11 (e) ~~engaging in activities that may improve the functioning of the public mental health system or of~~
 12 ~~agencies charged with the prevention, identification, and treatment of child abuse and neglect; and~~

13 (f) ~~issuing reports concerning the ombudsman's findings and recommendations, if necessary.~~

14 (6) The ombudsman must be given access to state and local agency PUBLIC records ~~including~~ AND, with
 15 written authorization FROM THOSE HOLDING PRIVACY INTERESTS, ~~those~~ RECORDS that are considered confidential.

16 The ombudsman may not disclose confidential records and is subject to the same penalties as the legal
 17 custodian of the records for any unlawful or unauthorized disclosure.

18 ~~(4)(7)~~ The ombudsman may retain counsel for legal support.

19 (8) The ombudsman may retain technical assistance concerning the child protective services system.

20 ~~(5)(9)~~ Names of individuals receiving assistance from the ombudsman and information associated with
 21 an individual compiled by the ombudsman in the course of conducting an investigation are confidential and
 22 privileged information and ~~may not be disclosed~~ are not subject to discovery, subpoena, or other means of legal
 23 compulsion unless a court has determined that certain information is subject to compulsory legal process or
 24 discovery because the party seeking the information has demonstrated that there is a compelling state interest
 25 that outweighs the individual's privacy interest or the information is requested pursuant to an investigative
 26 subpoena issued under 46-4-301.

27 (10) ~~The~~ WITH RESPECT TO ITS DUTIES RELATED TO MENTAL HEALTH SERVICES, THE mental health and family
 28 ombudsman is a health oversight agency for the purposes of Title 45, part 164, of the Code of Federal
 29 Regulations for accessing protected health care information.

30 (11) The department shall provide necessary information in order for the ombudsman to carry out the

1 duties as set forth in subsections (3) through (5)."

2

3 **Section 2.** Section 41-3-205, MCA, is amended to read:

4 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
5 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
6 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
7 as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly
8 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
9 misdemeanor.

10 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
11 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
12 it.

13 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
14 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
15 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
16 following persons or entities in this state and any other state or country:

17 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
18 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and
19 that otherwise meets the disclosure criteria contained in this section;

20 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
21 family or child who is the subject of a report in the records or to a person authorized by the department to receive
22 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
23 placement;

24 (c) a health or mental health professional who is treating the family or child who is the subject of a report
25 in the records;

26 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
27 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
28 person who reported or provided information on the alleged child abuse or neglect incident contained in the
29 records;

30 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian

- 1 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by
2 the court to represent a child in a pending case;
- 3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);
- 4 (g) approved foster and adoptive parents who are or may be providing care for a child;
- 5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
7 person whose safety may be endangered;
- 8 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
9 an alleged perpetrator of child abuse or neglect;
- 10 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
11 that is authorized by the department to conduct the research or evaluation;
- 12 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
13 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
14 treatment plan, and monitoring the plan;
- 15 (l) the coroner or medical examiner when determining the cause of death of a child;
- 16 (m) a child fatality review team recognized by the department;
- 17 (n) a department or agency investigating an applicant for a license or registration that is required to
18 operate a youth care facility, day-care facility, or child-placing agency;
- 19 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
20 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
21 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
22 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
23 children, persons with developmental disabilities, or older persons posed by the person about whom the
24 information is sought, as determined by the department.
- 25 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
26 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
27 privacy rights of the child or the child's parent or guardian, as determined by the department;
- 28 (q) an employee of the department or other state agency if disclosure of the records is necessary for
29 administration of programs designed to benefit the child;
- 30 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary

1 to meet requirements of the federal Indian Child Welfare Act;

2 (s) a youth probation officer who is working in an official capacity with the child who is the subject of a
3 report in the records;

4 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
5 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

6 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
7 board established under Title 41, chapter 3, part 10;

8 (v) a school employee participating in an interview of a child by a social worker, county attorney, or
9 peace officer, as provided in 41-3-202;

10 (w) a member of a county interdisciplinary child information team formed under the provisions of
11 52-2-211;

12 (x) members of a local interagency staffing group provided for in 52-2-203;

13 (y) a member of a youth placement committee formed under the provisions of 41-5-121; ~~or~~

14 (z) a principal of a school or other employee of the school district authorized by the trustees of the
15 district to receive the information with respect to a student of the district who is a client of the department; or

16 (aa) the mental health and family ombudsman when necessary to perform the ombudsman duties
17 provided for in 2-15-210 IF THE OMBUDSMAN OBTAINS WRITTEN AUTHORIZATION AS REQUIRED BY 2-15-210(6).

18 (4) A school or school district may disclose, without consent, personally identifiable information from
19 the education records of a pupil to the department, the court, a review board, ~~and~~ the child's court-appointed
20 attorney, guardian ad litem, or special advocate, and the mental health and family ombudsman provided for in
21 2-15-210.

22 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
23 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
24 provisions of the law.

25 (6) A person who is authorized to receive records under this section shall maintain the confidentiality
26 of the records and may not disclose information in the records to anyone other than the persons described in
27 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
28 proceedings confidential.

29 (7) A news organization or its employee, including a freelance writer or reporter, is not liable for
30 reporting facts or statements made by an immediate family member under subsection (6) if the news

1 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
2 proceeding.

3 (8) This section is not intended to affect the confidentiality of criminal court records, records of law
4 enforcement agencies, or medical records covered by state or federal disclosure limitations.

5 (9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
6 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
7 without cost."

8

9 **Section 3.** Section 50-16-530, MCA, is amended to read:

10 **"50-16-530. Disclosure without patient's authorization.** A health care provider may disclose health
11 care information about a patient without the patient's authorization if the disclosure is:

12 (1) directory information, unless the patient has instructed the health care provider not to make the
13 disclosure;

14 (2) to federal, state, or local public health authorities, to the extent the health care provider is required
15 by law to report health care information or when needed to protect the public health;

16 (3) to federal, state, or local law enforcement authorities to the extent required by law;

17 (4) to a law enforcement officer about the general physical condition of a patient being treated in a
18 health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of
19 another;

20 (5) in response to a request of the office of victims services for information under 53-9-104(2)(b);

21 (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

22 (7) pursuant to 50-16-712;

23 (8) to the mental health and family ombudsman when necessary to perform the ombudsman duties

24 CONCERNING MENTAL HEALTH SERVICES AS provided for in 2-15-210; or

25 ~~(8)~~(9) to the state medical examiner or a county coroner for use in determining cause of death. The
26 information is required to be held confidential as provided by law."

27

28 **Section 4.** Section 50-16-603, MCA, is amended to read:

29 **"50-16-603. Confidentiality of health care information.** Health care information in the possession of
30 the department, a local board, a local health officer, or the entity's authorized representatives may not be

1 released except:

2 (1) for statistical purposes, if no identification of individuals can be made from the information released;

3 (2) when the health care information pertains to a person who has given written consent to the release

4 and has specified the type of information to be released and the person or entity to whom it may be released;

5 (3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being
6 of the named person;

7 (4) as allowed by Title 50, chapters 17 and 18;

8 (5) to another state or local public health agency, including those in other states, whenever necessary
9 to continue health services to the named person or to undertake public health efforts to prevent or interrupt the
10 transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological,
11 chemical, or radiological agents capable of causing imminent disability, death, or infection;

12 (6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or
13 if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant
14 to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the
15 proceedings.

16 (7) to medical personnel, the department, a local health officer or board, or a district court when
17 necessary to implement or enforce state statutes or state or local health rules concerning the prevention or
18 control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other
19 provision contained in this part;

20 (8) to the mental health and family ombudsman when necessary to perform the ombudsman duties
21 provided for in 2-15-210 IF THE OMBUDSMAN OBTAINS WRITTEN AUTHORIZATION AS REQUIRED BY 2-15-210(6)."

22

23 **Section 5.** Section 53-21-166, MCA, is amended to read:

24 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared
25 in the course of providing any services under this part to individuals under any provision of this part are
26 confidential and privileged matter and must remain confidential and privileged after the individual is discharged
27 from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed
28 only:

29 (1) in communications between qualified professionals in the provision of services or appropriate
30 referrals;

1 (2) when the recipient of services designates persons to whom information or records may be released
 2 or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons
 3 to whom records or information may be disclosed. However, this section may not be construed to compel a
 4 physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that
 5 has been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in
 6 confidence by members of a patient's family.

7 (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical
 8 assistance to which a recipient may be entitled;

9 (4) for research if the department has promulgated rules for the conduct of research. Rules must include
 10 but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

11 (5) to the courts as necessary for the administration of justice;

12 (6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to
 13 whom the record or information pertains and the custodian of the record or information pursuant to the rules of
 14 civil procedure;

15 (7) to members of the mental disabilities board of visitors or their agents when necessary to perform
 16 their functions as set out in 53-21-104; and

17 (8) to the mental ~~and family~~ health AND FAMILY ombudsman when necessary to perform the ombudsman
 18 functions as provided in 2-15-210."

19
 20 NEW SECTION. SECTION 6. PRIORITIES. IT IS THE INTENT OF THE LEGISLATURE THAT THE MENTAL HEALTH AND
 21 FAMILY OMBUDSMAN PRIORITIZE THE DUTIES FOR ASSISTING IMMEDIATE AND EXTENDED FAMILY MEMBERS AND CHILD
 22 CUSTODIANS IN THE FOLLOWING ORDER:

23 (1) ASSIST FAMILIES IN INTERACTING WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES,
 24 INCLUDING THE USE OF THE DEPARTMENT'S GRIEVANCE PROCEDURE;

25 (2) BASED ON THE EXPERIENCE OF THE OMBUDSMAN, RECOMMEND SYSTEMIC CHANGES OR ACTIVITIES TO
 26 IMPROVE THE FUNCTIONING OF AGENCIES CHARGED WITH THE PREVENTION, IDENTIFICATION, AND TREATMENT OF CHILD
 27 ABUSE AND NEGLECT; AND

28 (3) ISSUE REPORTS TO THE GOVERNOR AND THE LEGISLATURE CONCERNING THE RECOMMENDATIONS IN
 29 SUBSECTION (2).

30

